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Legislative History – Montana Session Law

Chapter: 312 Session L: 2005
Bill Number: HB 40

Checklist of Bill History

History and Final Status Sheet	☑
Introduced Bill	☑
Fiscal Note	☐
Third Reading Bill	☐
Final Version of Bill	☐

House	**Senate**
Committee: Judiciary	Committee: Judiciary
Hearing Date(s): 1/19/2005	Hearing Date(s): 3/02/2005
Committee Report: 1/21/2005	Committee Report: 3/24/2005

Conference Committee

Hearing Date(s):

Conference Committee Report:

Compiler Notes

Compiled by: SK Marshall

Date: 5/5/2005

Notes:

Thank you!

Exported Data

Date	Action	Committee	Votes (Yes)	Votes (No)	Media
04/22/05	Chapter Number Assigned				
04/21/05	(H) Signed by Governor				
04/13/05	(H) Transmitted to Governor				
04/13/05	(S) Signed by President				
04/12/05	(H) Signed by Speaker				
04/11/05	(C) Printed - New Version Available				
04/11/05	(H) Returned from Enrolling				
04/08/05	(H) Sent to Enrolling				
04/08/05	(H) 3rd Reading Passed as Amended by Senate		92	4	
04/08/05	(H) Scheduled for 3rd Reading				
04/07/05	(H) 2nd Reading Senate Amendments Concurred		97	3	
04/07/05	(H) Scheduled for 2nd Reading				
04/01/05	(S) Returned to House with Amendments				
04/01/05	(S) 3rd Reading Concurred		50	0	
04/01/05	(S) Scheduled for 3rd Reading				
03/31/05	(S) 2nd Reading Concurred on Voice Vote		50	0	
03/31/05	(S) Scheduled for 2nd Reading				
03/30/05	(S) Scheduled for 2nd Reading				
03/29/05	(S) Scheduled for 2nd Reading				
03/24/05	(C) Printed - New Version Available				
03/24/05	(S) Committee Report--Bill Concurred as Amended	(S) Judiciary			
03/24/05	(S) Committee Executive Action--Bill Concurred as Amended	(S) Judiciary	12	0	
03/02/05	(S) Hearing	(S) Judiciary			
02/21/05	(S) Referred to Committee	(S) Judiciary			
02/21/05	(S) First Reading				
01/26/05	(H) Transmitted to Senate				
01/26/05	(H) 3rd Reading Passed		99	1	
01/26/05	(H) Scheduled for 3rd Reading				
01/25/05	(H) 2nd Reading Passed		98	1	
01/25/05	(H) Scheduled for 2nd Reading				
01/22/05	(H) Committee Report--Bill Passed	(H) Judiciary			

Date	Action	Committee	Votes (Yes)	Votes (No)	Media
01/21/05	(H) Committee Executive Action--Bill Passed	(H) Judiciary	18	0	
01/19/05	(H) Hearing	(H) Judiciary			
01/11/05	(H) Fiscal Note Printed				
01/10/05	(H) Fiscal Note Received				
12/27/04	(H) Referred to Committee	(H) Judiciary			
12/20/04	(H) Fiscal Note Requested				
12/06/04	(C) Introduced Bill Text Available Electronically				
12/06/04	(H) Introduced				
11/26/04	(C) Pre-Introduction Letter Sent				
11/23/04	(C) Draft in Assembly/Executive Director Review				
11/19/04	(C) Draft in Final Drafter Review				
11/19/04	(C) Bill Draft Text Available Electronically				
11/19/04	(C) Draft in Input/Proofing				
11/19/04	(C) Draft to Drafter - Edit Review				
11/19/04	(C) Draft in Edit				
11/19/04	(C) Draft in Legal Review				
11/04/04	(C) Draft to Requester for Review				
10/27/04	(C) Fiscal Note Probable				
10/27/04	(C) Draft Request Received				

AN ACT EXPANDING CIVIL AND CRIMINAL LIABILITY FOR MAKING A FALSE CLAIM TO A STATE AGENCY; AMENDING SECTIONS 17-8-231 AND 45-7-210, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

Section 1. Section 17-8-231, MCA, is amended to read:

"17-8-231. Liability for false claims, records, or statements. (1) (a) A person who knowingly presents or causes to be presented a false, fictitious, or fraudulent claim for allowance or payment to ~~any~~ a state agency or its contractors forfeits the claim, including any portion that may be legitimate, and ~~in addition~~ is subject to a civil penalty of not to exceed $2,000 plus double the amount of damages sustained by the state as a result of the false claim~~, including all legal costs~~. The court shall also award expenses, costs, and attorney fees.

(b) A person who knowingly makes, uses, or causes to be made or used a false record or statement to conceal, avoid, or decrease an obligation to pay or transmit money or property to a state agency or its contractors is subject to a civil penalty of not to exceed $2,000 plus double the amount of damages sustained by the state as a result of the false record or statement. The court shall also award expenses, costs, and attorney fees.

(2) This section does not apply to claims, records, or statements made in relation to claims filed with the state compensation insurance fund under Title 39, chapter 71 or 72, or to claims, records, payments, or statements made under the tax laws contained in Title 15 or 16 or made to the department of natural resources and conservation under Title 77.

~~(2)~~(3) ~~The~~ A forfeiture and ~~the~~ penalty may be sued for in the same suit."

Section 2. Section 45-7-210, MCA, is amended to read:

"45-7-210. False ~~claims~~ claim to public ~~agencies~~ agency. (1) A person commits an offense under this section if the person ~~purposely and~~ knowingly presents for allowance, ~~or~~ for payment ~~any~~, or for the purpose of concealing, avoiding, or decreasing an obligation to pay a false or fraudulent claim, bill, account, voucher, or writing to ~~any~~ a public agency, public servant, or contractor authorized to allow or pay valid claims presented to a public ~~agencies if genuine~~ agency.

(2) (a) Except as provided in subsection (2)(b), a person convicted of an offense under this section shall

be fined not to exceed $1,000 or imprisoned in the county jail for a term not to exceed 6 months, or both.

(b) If a false or fraudulent ~~claims are~~ claim is knowingly submitted ~~purposely and knowingly~~ as part of a common scheme or if the value of the claim or the aggregate value of ~~all~~ one or more claims exceeds $1,000, a person convicted of an offense under this section shall be fined not to exceed $10,000 or imprisoned in the state prison for a term not to exceed 10 years, or both."

Section 3. Effective date. [This act] is effective on passage and approval.

- END -

I hereby certify that the within bill,
HB 0040, originated in the House.

Chief Clerk of the House

Speaker of the House

Signed this _____ day
of _____, 2019.

President of the Senate

Signed this _____ day
of _____, 2019.

HOUSE BILL NO. 40

INTRODUCED BY HARRIS

BY REQUEST OF THE DEPARTMENT OF JUSTICE

AN ACT EXPANDING CIVIL AND CRIMINAL LIABILITY FOR MAKING A FALSE CLAIM TO A STATE AGENCY; AMENDING SECTIONS 17-8-231 AND 45-7-210, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

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Chief Clerk of the House

Speaker of the House

Signed this _____ day
of _____, 2019.

President of the Senate

Signed this _____ day
of _____, 2019.

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HOUSE BILL NO. 40

INTRODUCED BY C. HARRIS

BY REQUEST OF THE DEPARTMENT OF JUSTICE

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NEW SECTION. **Section 3. Effective date.** [This act] is effective on passage and approval.

- END -

HOUSE BILL NO. 40

INTRODUCED BY HARRIS

BY REQUEST OF THE DEPARTMENT OF JUSTICE

A BILL FOR AN ACT ENTITLED: "AN ACT EXPANDING CIVIL AND CRIMINAL LIABILITY FOR MAKING A FALSE CLAIM TO A STATE AGENCY; AMENDING SECTIONS 17-8-231 AND 45-7-210, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE."

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NEW SECTION. **Section 3. Effective date.** [This act] is effective on passage and approval.

- END -

FISCAL NOTE

Bill #: HB0040 **Title:** Expand coverage of civil and criminal false claims against the state

Primary Sponsor: Harris, C **Status:** As Introduced

Sponsor signature Date

David Ewer, Budget Director Date

Fiscal Summary

	FY 2006 Difference	FY 2007 Difference
Expenditures:		
General Fund	$0	$0
Revenue:		
General Fund	$0	$0
Net Impact on General Fund Balance:	$0	$0

☐ Significant Local Gov. Impact ☐ Technical Concerns

☐ Included in the Executive Budget ☐ Significant Long-Term Impacts

☐ Dedicated Revenue Form Attached ☐ Needs to be included in HB 2

Fiscal Analysis

ASSUMPTIONS:

1. This proposed legislation may result in more felony charges being filed but with the data available the fiscal impact, if there was any, is difficult to quantify and is likely to be nominal.

MINUTES

MONTANA HOUSE OF REPRESENTATIVES
59th LEGISLATURE - REGULAR SESSION

COMMITTEE ON JUDICIARY

Call to Order: By **CHAIRMAN DIANE RICE,** on January 19, 2005 at 8:00 A.M., in Room 137 Capitol.

ROLL CALL

Members Present:
Rep. Diane Rice, Chairman (R)
Rep. Paul Clark, Vice Chairman (D)
Rep. Ron Stoker, Vice Chairman (R)
Rep. Arlene Becker (D)
Rep. Robyn Driscoll (D)
Rep. George Everett (R)
Rep. Gail Gutsche (D)
Rep. Christopher Harris (D)
Rep. Roger Koopman (R)
Rep. Michael Lange (R)
Rep. Tom McGillvray (R)
Rep. Mark E. Noennig (R)
Rep. Art Noonan (D)
Rep. John Parker (D)
Rep. Jon Sonju (R)
Rep. John Ward (R)
Rep. Bill Wilson (D)
Rep. Jeanne Windham (D)

Members Excused: None.

Members Absent: None.

Staff Present: John MacMaster, Legislative Branch
Pam Schindler, Committee Secretary

Please Note. These are summary minutes. Testimony and discussion are paraphrased and condensed.

Committee Business Summary:
Hearing & Date Posted: HB 197, HB 245, HB 40, HB 243, 1/11/2005
Executive Action: HB 66-Do Pass As Amended, HB 49-Do Pass As Amended, HB 169-Do Pass As

Amended, HB 191-Do Pass As Amended, HB 113-Do Pass As Amended, HB 110-Do Pass As Amended, HB 23-Tabled

HEARING ON HB 197

REP. JOEY JAYNE, HD 15, ARLEE

Opening Statement by Sponsor:

REP. JOEY JAYNE (D), HD 15, opened the hearing on **HB 197**, Increase elder abuse penalties. She stated this bill is at the request of DPHHS.
{Tape: 1; Side: A; Approx. Time Counter: 0 - 88}

Proponents' Testimony:

Rick Bartos, Department of Public Health and Human Services, Director-Adult Protective Services, rose in strong support of HB 197. **Mr. Bartos** stated the department has approximately 2,600 referrals of abuse and neglect of the elderly, senior citizens and developmentally disabled every year. Of the 2,600, more than 1,600 referrals relate to the elderly. Typically the victim is a woman, who is more than 80 years old and has no family or family support.

Mr. Bartos further related stories of abuse and neglect by family members and assisted living care facilities.
{Tape: 1; Side: A; Approx. Time Counter: 88 - 216}

Leo Gallagher, Lewis and Clark County Attorney, rose in support of HB 197. He informed the committee members that cases of elder abuse are hard to prosecute. **Mr. Gallagher** stated that what this bill will do is "marry" some of the penalties and terminology found in Title 45 and Title 52. He explained the differences in the penalties for the same offenses perpetrated against a minor versus an elderly person.

Mr. Gallagher continued to speak to the committee about the specificities in Title 52 regarding sexual abuse. This is in reference to the offender only being charged with a misdemeanor which is the current language. He implored the committee to correct this problem.
{Tape: 1; Side: A; Approx. Time Counter: 216 - 271}

Tylynn Gordon, State of Montana, Auditor's Office, rose in support of HB 197. She stated that this bill strengthens the penalties available for prosecution for "...who abuse and neglect our elder population."

{Tape: 1; Side: A; Approx. Time Counter: 271 - 304}

Rose Hughes, Montana Health Care Association, rose in support of HB 197. **Ms. Hughes** stated to the committee members that her association sees the situation from both sides. The nursing home where the elderly may be placed; employees could be abusing the elderly, then there is usually no follow-up with the law, and then those former employees go on to other nursing homes without their names being added to the Nurse Aide Registry.
{Tape: 1; Side: A; Approx. Time Counter: 304 - 372}

Betty Beverly, Montana Senior Citizens Association, rose in support of HB 197.
{Tape: 1; Side: A; Approx. Time Counter: 372 - 392}

Beth Brenneman, Montana Advocacy Program, rose in support of HB 197. **Ms. Brenneman** spoke of a possible amendment to "...clearly encompass the offenses intended, and avoid the real possibility of a felony prosecution of a person with a developmental disability for a conflict with another resident."
EXHIBIT(juh14a01)
{Tape: 1; Side: A; Approx. Time Counter: 392 - 467}

Opponents' Testimony: None

Informational Testimony: None

Questions from Committee Members and Responses:

REP. RICE asked numerous questions of Mr. Bartos regarding the story that he had told to the committee regarding the elderly lady that lived in the Assisted Living Facility. REP. RICE was concerned about the number of other residents that would have been involved, if financial problems within the facility were driving the problems and whether the facility had been inspected on a regular basis. **Mr. Bartos** stated that four or five other residents had been similarly abused, there was not enough staff, the director had been dismissed and the license for the facility revoked.

REP. CLARK inquired of Mr. Gallagher if verbal abuse would apply in reference to this bill. **Mr. Gallager** responded that verbal abuse would not apply.

REP. EVERETT continued with a question for Mr. Bartos. These questions were about the 2000-plus cases of elder abuse, the probability of felony charges filed and the discretion of the county attorney.

Mr. Bartos did indicate that it is at the discretion of the individual county attorney of each county whether or not to prosecute.

REP. EVERETT posed a last question to Mr. Bartos regarding the definition of neglect. **Mr. Bartos** referred to Title 52 and the handout for the answer.
EXHIBIT(juh14a02)
{Tape: 1; Side: A; Approx. Time Counter: 467 - 500}
{Tape: 1; Side: B; Approx. Time Counter: 0 - 95}

Closing by Sponsor:

REP. JAYNE closed the hearing on HB 197.
{Tape: 1; Side: B; Approx. Time Counter: 95 - 121}

HEARING ON HB 245

REP. GARY MACLAREN, HD 89, VICTOR

Opening Statement by Sponsor:

REP. GARY MACLAREN (R), HD 89, opened the hearing on **HB 245,** Require parental consent for minor body piercing.
{Tape: 1; Side: B; Approx. Time Counter: 121 - 143}

Proponents' Testimony:
Gilda Clancy, Montana Eagle Forum, rose in support of HB 245.
{Tape: 1; Side: B; Approx. Time Counter: 143 - 163}

Dallas Erickson, Montana Family Coalition, rose in support of HB 245.
{Tape: 1; Side: B; Approx. Time Counter: 163 - 169}

Harris Himes, rose in support of HB 245.
{Tape: 1; Side: B; Approx. Time Counter: 169 - 173}

Jacque Trude, self, rose in support of HB 245.
{Tape: 1; Side: B; Approx. Time Counter: 173 - 176}

Opponents' Testimony: None

Informational Testimony: None

Questions from Committee Members and Responses:
REP. CLARK inquired of the sponsor to explain how "foreign" or outside of the ear piercing could be included in this bill.

REP. MCLAREN said that he would acknowledge that the language regarding outside of the ear piercings should be in HB 245 but he didn't know how to differentiate that from other areas.

REP. WARD then asked the sponsor whether or not tattoos could be used in the same language. **REP. LANGE** then had a follow-up question to REP. MCLAREN regarding the age requirement. **REP. MCLAREN** replied that his intent would be for 21 years old however, he would be amenable to 18 years old for this bill.
{Tape: 1; Side: B; Approx. Time Counter: 176 - 241}

Closing by Sponsor:
REP. MCLAREN closed the hearing on HB 245.
{Tape: 1; Side: B; Approx. Time Counter: 241 - 253}

HEARING ON HB 40

REP. CHRISTOPHER HARRIS, HD 66, BOZEMAN

Opening Statement by Sponsor:

REP. CHRISTOPHER HARRIS (D), HD 66, opened the hearing on **HB 40,** Expand coverage of civil and criminal false claims against the state. **REP. HARRIS** stated to the committee he brought this bill at the request of the Department of Justice.
{Tape: 1; Side: B; Approx. Time Counter: 253 - 313}

Proponents' Testimony:
Ali Bovington, Assistant Attorney General, rose in support of HB 40. **Ms. Bovington** was able to explain to the committee members how the drug companies are able to overstate their prices which then lead to inflated wholesale prices which results in the consumer paying more.
EXHIBIT(juh14a03)
{Tape: 1; Side: B; Approx. Time Counter: 313 - 418}

Opponents' Testimony: None

Informational Testimony: None

Questions from Committee Members and Responses:

REP. MCGILLVRAY inquired of Ms. Bovington if this bill has any relationship or conflicting language in reference to HB 146 that REP. GALLIK has introduced. **Ms. Bovington** responded that if both bills passed; the two bills would be coordinated.

REP. STOKER continued the questioning of Ms. Bovington. He was interested in the free samples that drug companies distribute and if they are used as part of the pricing. **Ms. Bovington** explained how they are in fact used.

REP. NOENNIG then started his questioning of Ms. Bovington. He was interested in the contracts and if they would fit the Federal statute for false claims.

REP. LANGE questioned the sponsor as to the effect of the pricing to consumers.
{Tape: 1; Side: B; Approx. Time Counter: 418 - 500}
{Tape: 2; Side: A; Approx. Time Counter: 0 - 57}

Closing by Sponsor:

REP. HARRIS closed the hearing on HB 40.
{Tape: 2; Side: A; Approx. Time Counter: 57 - 67}

HEARING ON HB 243

REP. CAROL LAMBERT, HD 39, BROADUS

Opening Statement by Sponsor:

REP. CAROL LAMBERT (R), HD 39, opened the hearing on **HB 243,** Revise reimbursement of counties for detention costs. **REP. LAMBERT** informed the committee members that this is a "Farmer's Bill" and was heard in the 2003 Legislative Session; however, it disappeared into the "Black Hole."

REP. LAMBERT stated to the committee members that she would be amenable to an amendment making the date effective as of January 1, 2005 so as not to lose three or four months of reimbursement to the counties.
EXHIBIT(juh14a04)
EXHIBIT(juh14a05)
EXHIBIT(juh14a06)
EXHIBIT(juh14a07)
{Tape: 2; Side: A; Approx. Time Counter: 67 - 162}

Proponents' Testimony:

Linda Stoll, Missoula County, rose in support of HB 243. She reported to the committee that when Fish, Wildlife and Parks arrests someone, FWP pays for the incarceration; when Montana Highway Patrol arrests someone, DOJ pays for the incarceration; and when Department of Corrections arrests for a parole violation the DOC pays. The question then arises, why this should be any different for a parole violation. DOC initiates the parole action, just as they do for the parole violators.

Ms. Stoll suggested to the committee that this is a tax shift to local taxpayers and an unfair burden for local counties to pay these costs.
{Tape: 2; Side: A; Approx. Time Counter: 162 - 181}

Jim Smith, Montana Sheriffs and Peace Officers Association, rose in support of HB 243. **Mr. Smith** stated to the committee members that in any county, the biggest part of the counties' budget is the Sheriff'``s Office. And within that Sheriff's Department the biggest part of that budget is the cost related to running the detention center.

He further stated that there can be a great lapse of time between the arrest, the acceptance of a verdict or plea and finally the pronouncement of the sentence. This is about fairness.
{Tape: 2; Side: A; Approx. Time Counter: 191 - 230}

Harold Blattie, Montana Association of Counties, rose in strong support of HB 243. He stated to committee members that his organization adopted a resolution in 2000 about this issue. The Attorney General's Office adopted a similar resolution in 2001 that the Department of Corrections would, after "an oral pronouncement" of sentence, pay for the incarceration of offenders. The DOC had taken the position that the costs to them would start after the "written pronouncement" of the sentence. Therein, lies the problem.

Mr. Blattie informed the committee that Charles Brooks from Yellowstone County also supports HB 243.
{Tape: 2; Side: A; Approx. Time Counter: 230 - 276}

Opponents' Testimony: None

Informational Testimony:

Joe Williams, Department of Correction, informed the committee members that when there is a probation violation, the jurisdiction stays with the District Court judge and with that County Attorney. When there is a violation of the parole agreement, that is a function of the State with the Parole Board; therefore, the State has control.
{Tape: 2; Side: A; Approx. Time Counter: 276 - 292}

Questions from Committee Members and Responses:

REP. KOOPMAN inquired of the sponsor that if the county is incurring greater costs to incarcerate these offenders, why don't those counties try harder to get the offenders out of their jails. **REP. LAMBERT** replied, "...the counties have no control over when the offenders may be released; therefore, they have no control at the present time over the costs they are incurring."

REP. WINDHAM discussed the Fiscal Note with REP. LAMBERT. **REP. WARD** asked Mr. Williams to explain the difference between probation and parole and if those terms are interchangeable.
{Tape: 2; Side: A; Approx. Time Counter: 292 - 458}

Closing by Sponsor:

REP. LAMBERT closed the hearing on HB 243
{Tape: 2; Side: A; Approx. Time Counter: 458 - 500}

EXECUTIVE ACTION ON HB 23

Motion/Vote: **REP. PARKER moved that HB 23 BE TABLED. Motion carried unanimously by voice vote.**
{Tape: 2; Side: B; Approx. Time Counter: 0 - 23}

During the break, **Mr. MacMaster** explained the procedure on how to request an amendment.
{Tape: 2; Side: B; Approx. Time Counter: 23 - 34}

EXECUTIVE ACTION ON HB 49

Motion: REP. CLARK moved that HB 49 DO PASS.

Discussion:

Motion: REP. WILSON moved that HB 49 BE AMENDED with 49-02. EXHIBIT(juh14a08)

Discussion:

Mr. MacMaster explained the amendment. The majority of the committee weighed in on the Amendment 49-02 with variations to that amendment but none were added to change the significance of the amendment.

Vote: Motion carried unanimously by roll call vote.

Motion: REP. CLARK moved that HB 49 BE AMENDED with a Conceptual Amendment. Motion carried unanimously by voice vote.

Motion: REP. CLARK moved that HB 49 DO PASS AS AMENDED.

Discussion:

Motion: REP. KOOPMAN moved that HB 49 BE AMENDED with 49-01. EXHIBIT(juh14a09)

Discussion:

The discussion centered around the registration of sex offenders in Montana.

Vote: Motion failed 2-16 with REPS. KOOPMAN and WARD voting aye by roll call vote.

Motion/Vote: REP. WILSON moved that HB 49 DO PASS AS AMENDED. Motion carried unanimously by roll call vote.
{Tape: 2; Side: B; Approx. Time Counter: 34 - 500}
{Tape: 3; Side: A; Approx. Time Counter: 0 - 100}

EXECUTIVE ACTION ON HB 66

Motion: REP. MCGILLVRAY moved that HB 66 DO PASS.

Discussion:

Motion: REP. PARKER moved that HB 66 BE AMENDED with amendment 66-01.

Discussion:

This amendment was handed out at the time of the hearing. **Mr. MacMaster** explained the amendment again.

Vote: Motion carried unanimously by voice vote.

Motion/Vote: REP. PARKER moved that HB 66 DO PASS AS AMENDED. Motion carried unanimously by roll call vote.

{Tape: 3; Side: A; Approx. Time Counter: 100 - 249}

EXECUTIVE ACTION ON HB 110

Motion: REP. CLARK moved that HB 110 DO PASS.

Discussion:

Motion: REP. NOENNIG moved that HB 110 BE AMENDED with amendment 110-01.
EXHIBIT(juh14a10)

Discussion:

Mr. MacMaster explained the amendment.

Vote: Motion carried unanimously by voice vote.

Motion/Vote: REP. NOENNIG moved that HB 110 DO PASS AS AMENDED. Motion carried unanimously by roll call vote.
{Tape: 3; Side: A; Approx. Time Counter: 249 - 413}

EXECUTIVE ACTION ON HB 113

Motion: REP. PARKER moved that HB 113 DO PASS.

Discussion:

Motion/Vote: REP. PARKER moved that HB 113 BE AMENDED with 113-02. Motion carried unanimously by voice vote.
EXHIBIT(juh14a11)

Motion: REP. PARKER moved that HB 113 DO PASS AS AMENDED.

Discussion:

Motion: REP. KOOPMAN moved that HB 113 BE AMENDED with 113-01.
EXHIBIT(juh14a12)

Discussion:

The committee members discussed this amendment as to the length of time that offenders must register and to the fingerprint issue.

Vote: Motion failed 2-16 with REPS. KOOPMAN and RICE voting aye by voice vote.

Motion/Vote: REP. HARRIS moved that HB 113 DO PASS AS AMENDED. Motion carried 12-6 by roll call vote with REPS. CLARK, EVERETT, KOOPMAN, RICE, SONJU, and WARD voting no.
{Tape: 3; Side: A; Approx. Time Counter: 413 - 500}
{Tape: 3; Side: B; Approx. Time Counter: 85 - 179}

EXECUTIVE ACTION ON HB 146

Mr. MacMaster explained to the committee that HB 146 and HB 40 do not need to be coordinated. After learning that, the committee members decided to terminate the Executive Action Motion on HB 146.
{Tape: 3; Side: B; Approx. Time Counter: 179 - 277}

EXECUTIVE ACTION ON HB 169

Motion: REP. GUTSCHE moved that HB 169 DO PASS.

Discussion:

Motion: REP. NOENNIG moved that HB 169 BE AMENDED with 169-01. EXHIBIT(juh14a13)

Discussion:

Mr. MacMaster explained the amendment.

Vote: Motion HB 169 BE AMENDED carried unanimously by voice vote.

Motion/Vote: REP. NOENNIG moved that HB 169 DO PASS AS AMENDED. Motion carried 16-2 by voice vote with REPS. KOOPMAN and RICE voting no.
{Tape: 3; Side: B; Approx. Time Counter: 277 - 393}

EXECUTIVE ACTION ON HB 191

Motion: REP. BECKER moved that HB 191 DO PASS AS AMENDED.

Discussion:

Motion: REP. BECKER moved that HB 191 BE AMENDED with 191-01. EXHIBIT(juh14a14)

Discussion:

The Representatives discussed this bill as due to the burden that testifying may place on a marriage, the common law statutes and lack thereof and to the time frame involved in such marriages.

Vote: Motion carried unanimously by voice vote.

Motion/Vote: REP. BECKER moved that HB 191 DO PASS AS AMENDED. Motion carried 17-1 by voice vote with REP. MCGILLVRAY voting no.
{Tape: 3; Side: B; Approx. Time Counter: 393 - 500}
{Tape: 4; Side: A; Approx. Time Counter: 0 - 35}

ADJOURNMENT

Adjournment: 11:58 A.M.

_____
REP. DIANE RICE, Chairman

_____
PAM SCHINDLER, Secretary

DR/ps

Additional Exhibits:

EXHIBIT(juh14aad0.PDF)

MINUTES

MONTANA HOUSE OF REPRESENTATIVES
59th LEGISLATURE - REGULAR SESSION

COMMITTEE ON JUDICIARY

Call to Order: By **CHAIRMAN DIANE RICE**, on January 21, 2005 at 8:00 A.M., in Room 137 Capitol.

ROLL CALL

Members Present:
Rep. Diane Rice, Chairman (R)
Rep. Paul Clark, Vice Chairman (D)
Rep. Ron Stoker, Vice Chairman (R)
Rep. Arlene Becker (D)
Rep. Robyn Driscoll (D)
Rep. George Everett (R)
Rep. Gail Gutsche (D)
Rep. Christopher Harris (D)
Rep. Roger Koopman (R)
Rep. Michael Lange (R)
Rep. Tom McGillvray (R)
Rep. Mark E. Noennig (R)
Rep. Art Noonan (D)
Rep. John Parker (D)
Rep. Jon Sonju (R)
Rep. John Ward (R)
Rep. Bill Wilson (D)
Rep. Jeanne Windham (D)

Members Excused: None.

Members Absent: None.

Staff Present: John MacMaster, Legislative Branch
Pam Schindler, Committee Secretary

Please Note. These are summary minutes. Testimony and discussion are paraphrased and condensed.

Committee Business Summary:

Hearing & Date Posted:	HB 257, HB 264, HB 267, HB 280, HB 285, 1/14/2005
Executive Action:	HB 257-Do Pass, HB 264-Do Pass, HB 40-Do Pass; HB 146-Do Pass As Amended

HEARING ON HB 285

REP. JANNA TAYLOR, HD 11, DAYTON

Opening Statement by Sponsor:

REP. JANNA TAYLOR (R), HD 11, opened the hearing on **HB 285,** Allow domestic violence victims to route mail through Secretary of State. **REP. TAYLOR** submitted to the committee an amendment that would allow the program to transfer from the Secretary of State to the Department of Justice (DOJ).
EXHIBIT(juh16a01)
{Tape: 1; Side: A; Approx. Time Counter: 0 - 76}

Proponents' Testimony:

Pam Bucy, Assistant Attorney General (AG), rose in support of HB 285. **Ms. Bucy** informed the committee members that this program has been in existence since 1985 under the auspices of the Board of Crime Control when it was then transferred to the Attorney General's Office (AG). She stated that 15 other states have similar programs.
{Tape: 1; Side: A; Approx. Time Counter: 76 - 103}

Kate Cholewa, Montana Coalition Against Domestic and Sexual Violence, rose in support of HB 285. She stated that 16 states have similar statutes that authorize "address confidentiality" services. **Ms. Cholewa** stated that the State of Washington was the first state to create this program in 1991. The population requesting their services is currently 54% children, 41% women and 5% men.

This bill would allow victims to be assigned a "dummy address" by the Attorney General's Office. The mail is received at that substitute address with First Class mail then being forwarded by the Attorney General's Office to the confidential address of the victims.

Ms. Cholewa suggested to the committee that an amendment creating a requirement of Montana residency be addressed.
{Tape: 1; Side: A; Approx. Time Counter: 103 - 138}

Kelsey Young, Montana Coalition Against Domestic and Sexual Violence, rose in support of HB 285.
{Tape: 1; Side: A; Approx. Time Counter: 138 - 145}

Michael O'Brien, Chief Deputy of Montana Secretary of State, rose in support and stated that the Secretary of State's Office is in agreement with the amendments that REP. TAYLOR distributed. ***{Tape: 1; Side: A; Approx. Time Counter: 145 - 153}***

Opponents' Testimony: None

Informational Testimony: None

Questions from Committee Members and Responses:
REP. KOOPMAN posed some questions to the sponsor regarding unintended consequences of having a "secret" address. His concerns were the abuse of the address to avoid debt collectors, etc. **REP. TAYLOR** assured the committee that could not happen as the debt collectors could still find the party through the substitute address.

REP. RICE then addressed Ms. Young as to the possibility of a breakdown in the system with the USPO. **Ms. Young** responded that it is the AG's Office that would change the address. She then stated the ways offenders find the victims; through voter records which are public or by paying a nominal fee to the USPO or government agencies that have "lists."

Ms. Young explained the procedure to the committee members. The victim would sign up with the AG's Office and be given a P.O. Box number that all the victims use. The victim would then have a "family code" identifying said mail. Then all of that victim's mail would go to the AG's Office to be distributed confidentially to them by the AG's Office.

REP. CLARK questioned Ms. Bucy thoroughly about the employee at the AGs Office who is the distributor of the victim's mail. Would that person have a security clearance and what other precautions would be there to insure that there are no breaches in that system. **Ms. Bucy** stated that would not be an issue, anyone who works at the Victims Bureau at the AG's Office already has clearance and certainly the person in charge of this service would be trained with confidentiality being the main issue.

REP. CLARK and **REP. NOENNIG** then questioned Mr. O'Brien regarding the issue of voter registration, by asking how the victim would be able to register to vote if those lists are public.

Mr. O'Brien informed the committee that the issue is resolved between the registrant and the AG's Office. **Ms. Bucy** also

responded that the Montana Secretary of State does not require a physical address to register to vote.

REP. HARRIS voiced his concern about if or when there is a leak in confidentiality; what about the legal exposure. **Ms. Bucy** stated that the Department of Justice would receive the immunity provision set forth in this bill.
{Tape: 1; Side: B; Approx. Time Counter: 0 - 39}

HEARING ON HB 257

REP. GARY BRANAE, HD 54, BILLINGS

Opening Statement by Sponsor:

REP. GARY BRANAE (D), HD 54, opened the hearing on **HB 257,** Revise permissible term for personal service contracts.

Proponents' Testimony:

Kathy Kenyon, Deaconess Billings Clinic, rose in support of HB 257. She gave the example of negotiating contracts with incoming employees at the Clinic for longer terms without those prospective employees knowing of the two-year contract statute.
EXHIBIT(juh16a02)
{Tape: 1; Side: B; Approx. Time Counter: 39 - 100}

Tom Ebzery, St. Vincent Healthcare, rose in support of HB 257 and stated that this bill is a housekeeping measure.
{Tape: 1; Side: B; Approx. Time Counter: 100 - 115}

John Flink, Montana Hospital Association, rose in support of this bill and stated that this is an issue especially for the rural areas of Montana.

Opponents' Testimony: None

Informational Testimony: None

Questions from Committee Members and Responses:

REP. NOENNIG queried Ms. Kenyon regarding the "indentured servitude" attitude that drove the initial bill limiting employment to two years. They also spoke of the un-enforceability issue that the previous statute employs.
{Tape: 1; Side: B; Approx. Time Counter: 115 - 189}
Closing by Sponsor:

REP. BRANAE closed the hearing on HB 285.
{Tape: 1; Side: B; Approx. Time Counter: 189 - 207}

HEARING ON HB 267

REP. RON STOKER, HD 87, DARBY

Opening Statement by Sponsor:

REP. RON STOKER (R), HD 87, opened the hearing on **HB 267,** Convicted person to pay costs of local government after second trial. **REP. STOKER** gave the town of Darby, Montana, as an example of a town with limited jurisdiction that suffers the costs of a trial.

He spoke of the case where someone is charged with misdemeanor DUI and how that person will change his plea from Not Guilty to Guilty with the prospect of appealing the lower ruling to District Court. Supposedly, the District Court judges are more lenient and the chance may occur that the person would receive a smaller penalty.

REP. STOKER explained to the committee that after that trial is completed, the small town of Darby has had to pay for two trials, one prosecutor, one defense attorney and judge. In HB 267, the defendant will be required to pay for the two trials (if found guilty), the town's expenses, and an additional $200 fee.
{Tape: 1; Side: B; Approx. Time Counter: 207 - 299}

Proponents' Testimony:

Harold Blattie, Montana Association of Counties, rose in support of HB 267.
{Tape: 1; Side: B; Approx. Time Counter: 299 - 306}

Alex Hansen, Montana League of Cities and Towns, rose in support of HB 267 and stated that this is one way to help small towns with limited jurisdiction courts.
{Tape: 1; Side: B; Approx. Time Counter: 306 - 335}

REP. GORDON HENDRICK, HD 14, rose in support of HB 267 and informed the committee that as the mayor of Superior, Montana, he understands the costs. He stated that if an offender goes to a second trial, the cost is approximately $2,500 in addition to the defendant's attorney (if appointed), charging $100 an hour to represent the offender.
{Tape: 1; Side: B; Approx. Time Counter: 335 - 372}
Opponents' Testimony: None

Informational Testimony: None

Questions from Committee Members and Responses:

REP. HARRIS questioned the sponsor about the MCA current statute regarding the "guaranteed right to trial by jury" provision. **REP. STOKER** explained to the committee that this bill does not infringe on a person's right to trial by jury. This bill is about changing the attitude of the offender that is of "beating the local small court."

The discussion then ranged from an indigent defendant versus some one with money. The point being that a person who is indigent, if faced with having to pay this extra money, will just plead guilty and suffer those consequences. However, someone with money will still take the chance of pleading not guilty in an effort to try and "beat" the local court.

REP. HARRIS then questioned Ms. Bucy regarding the current system of assessing the costs of jury trials. **Ms. Bucy** replied that the imposition of fines by District Court is being done now, along with Municipal Courts. She also verified the theory that Justice of the Peace Courts and Municipal Courts are "harder" on defendants that District Courts.

REP. CLARK continued the questioning of Ms. Bucy. He asked if indigent defendants do not pay the court costs. The answer was, "Yes." Then he asked, "Do non-indigent defendants pay the court costs?" The answer again was, "Yes." **REP. CLARK** then stated that this could be construed as discrimination against people who have money and so would hinder them. **Ms. Bucy** then stated that the indigent could go for a second trial, "...if have no money, still no big deal."
{Tape: 1; Side: B; Approx. Time Counter: 372 - 500}
{Tape: 2; Side: A; Approx. Time Counter: 0 - 87}

Closing by Sponsor:

REP. STOKER closed the hearing on HB 267 by stating that the lower courts can impose costs presently, however, the money does not go back to the small towns.
{Tape: 2; Side: A; Approx. Time Counter: 87 - 117}

HEARING ON HB 264

REP. JEANNE WINDHAM, HD 12, POLSON

Opening Statement by Sponsor:

REP. JEANNE WINDHAM (D), HD 12, opened the hearing on **HB 264,** Redirect restitution payments to Office victim services. **REP. WINDHAM** informed the committee that the money currently goes into the General Fund with the amount increasing every year. However, the Crime Victims Compensation Program (CVP) runs out of money each year. She further stated that the federal government matches 60% of recovered monies.
{Tape: 2; Side: A; Approx. Time Counter: 117 - 177}

Proponents' Testimony:
Pam Bucy, Assistant Attorney General, rose in support of HB 264. She spoke of the Federal money that is disbursed to the restitution fund.
EXHIBIT(juh16a03)
{Tape: 2; Side: A; Approx. Time Counter: 177 - 218}

Kate Cholwea, Montana Coalition Against Domestic and Sexual Violence, stood in support of HB 264.
{Tape: 2; Side: A; Approx. Time Counter: 218 - 227}

Opponents' Testimony: None

Informational Testimony: None

Questions from Committee Members and Responses:

REP. KOOPMAN spoke with Ms. Bucy regarding the "workings" of the Crime Victims Compensation Program. **Ms. Bucy** then referred the line of questions to Cindy Paradis, who is with the Crime Victims Compensation Program.

Ms. Paradis explained how the money is disbursed to the victim for services. When a victim attends counseling, a medical service provider or needs money for utility bills, etc.; CVP examines the claims and if legitimate, pays the claim. At that point, restitution is sought from the offender.

One of the duties of Ms. Paradis, is to follow the offender's case through the court system, tracking when the defendant is able to make payments towards restitution. When any money is received, it is applied towards the defendant's accounts.

Ms. Paradis informed the committee that last year the fund disbursed more than $2 million dollars towards claims.
{Tape: 2; Side: A; Approx. Time Counter: 227 - 390}

Closing by Sponsor:

REP. WINDHAM closed the hearing on HB 264 with a Fiscal Note for this bill.
EXHIBIT(juh16a04)
{Tape: 2; Side: A; Approx. Time Counter: 390 - 418}

HEARING ON HB 280

REP. PAT WAGMAN, HD 62, LIVINGSTON

Opening Statement by Sponsor:

REP. PAT WAGMAN (R), HD 62, opened the hearing on **HB 280,** Revise use of electronic proceedings for district court.
{Tape: 2; Side: A; Approx. Time Counter: 418 - 484}

Proponents' Testimony:
Wayne Phillips, Disctrict Court Judge, Montana Judges Association, rose in support of HB 280. He explained to the committee members the cost-saving measure that this would be. Presently he must travel long distances on a weekly or monthly basis to be present at legal proceedings, thereby incurring traveling expenses of mileage, lodging, meals and, most importantly, time.

Court proceedings could happen on a much more timely basis and without huge expenses incurred by the counties for the equipment.

Judge Phillips did point out some small errors in the language of the bill to the committee members.
{Tape: 2; Side: A; Approx. Time Counter: 484 - 500}
{Tape: 2; Side: B; Approx. Time Counter: 0 - 53}

Mary Phippen, Montana Association of Clerks of District Court, rose in support of HB 280.
{Tape: 2; Side: B; Approx. Time Counter: 53 - 59}

David Martin, Montana Newspaper Association and Lee Enterprises, rose in support of HB 280.
{Tape: 2; Side: B; Approx. Time Counter: 59 - 64}

Opponents' Testimony:

Anita Roessmann, Montana Advocacy Program, rose in opposition to HB 280. Her testimony included information that if the defendant is mentally disabled, that person would not be able to "track" or take in information or assist in their own defense. She also stated that they would not be able to pick up "cues" from any participant in the hearing including their own attorney and would be confused. Another concern that Ms. Roessmann had was to the confidentiality of court proceedings.

Ms. Roessmann's concerns were also about the client's right to object to video/audio hearings, the right to an explanation prior to making a decision regarding the hearing, and the right to speak with counsel. She made a recommendation to the bill that would require advance notice and then informed consent be given by the defendant prior to the hearing.
{Tape: 2; Side: B; Approx. Time Counter: 59 - 173}

Informational Testimony: None

Questions from Committee Members and Responses:

REP. HARRIS asked if Judge Phillips would address Ms. Roessmann's concerns.

Judge Phillips stated that the defendant is always allowed "notice" to be given, but would have no problem with adding language that would address that issue. Regarding the issue of the attorney and client privilege, in his courtroom for instance, there is always time for the defendant and the defense counsel to speak. He vacates the courtroom to facilitate that proceeding.

Judge Phillips then addressed the issue of mental capacity and capabilities. He handles 60-70 court proceedings for commitment purposes and does not see the problems Ms. Roessmann speaks of. Special consideration is given for the mentally disabled to make sure they understand what is happening. In his testimony, the Judge explained much of what he does in his courtroom to facilitate the varied proceedings he adjudicates.

He further stated the cost savings would be appreciable and well worth the expense of new equipment.

REPS. BECKER, MCGILLVRAY, NOENNIG and **NOONAN** continued with the questioning of Judge Phillips regarding some changes in the language that could be made to "clean-up" HB 280.

REP. NOONAN addressed his questions to Ms. Roessmann with regard to her concerns involving the informed consent issue.

REPS. STOKER, HARRIS, MCGILLVRAY and **EVERETT** finished the questioning of the witnesses' regarding the Fiscal Note and the purchase of equipment necessary to implementation of HB 280. **Judge Phillips** stated that the travel budget currently is $5,000; he informed the committee that this would be a cost-saving measure.
{Tape: 2; Side: B; Approx. Time Counter: 173 - 500}
{Tape: 3; Side: A; Approx. Time Counter: 0 - 182}

Closing by Sponsor:

REP. WAGMAN closed the hearing on HB 280 by saying that this would allow the Department of Corrections to be more efficient and would save money and time.
{Tape: 3; Side: A; Approx. Time Counter: 182 - 208}

EXECUTIVE ACTION ON HB 257

Motion/Vote: **REP. CLARK moved that HB 257 DO PASS. Motion carried unanimously by voice vote.**
{Tape: 3; Side: A; Approx. Time Counter: 208 - 228}

EXECUTIVE ACTION ON HB 264

Motion/Vote: **REP. WINDHAM moved that HB 264 DO PASS. Motion carried 16-2 by voice vote with REPS. KOOPMAN and SONJU voting no.**
{Tape: 3; Side: A; Approx. Time Counter: 228 - 303}

REP. HARRIS discussed the coordination of HB 40 and HB 146.
{Tape: 3; Side: A; Approx. Time Counter: 303 - 328}

EXECUTIVE ACTION ON HB 146

Motion: **REP. HARRIS moved that HB 146 DO PASS.**

Discussion:

Motion: **REP. HARRIS moved that HB 146 BE AMENDED with a Conceptual Amendment to DELETE PAGE 7 LINE 3.**

Mr. Macmaster explained the amendment to the committee members.

Vote: **Motion carried unanimously by voice vote.**

Motion: **REP. HARRIS moved that HB 146 DO PASS AS AMENDED.**

Discussion:

Motion: **REP. MCGILLVRAY moved that HB 146 BE AMENDED with AMENDMENT 146-01.**
EXHIBIT(juh16a05)

Discussion:

Mr. MacMaster explained the amendment.

Vote: **Motion carried unanimously by voice vote.**

Motion/Vote: **REP. HARRIS moved that HB 146 DO PASS AS AMENDED. Motion carried unanimously by roll call vote.**
{Tape: 3; Side: A; Approx. Time Counter: 328 - 381}

EXECUTIVE ACTION ON HB 40

Motion/Vote: **REP. HARRIS moved that HB 40 DO PASS. Motion carried unanimously by voice vote.**
{Tape: 3; Side: A; Approx. Time Counter: 381 - 500}

EXECUTIVE ACTION ON HB 46

Motion: **REP. PARKER moved that HB 46 DO PASS.**

Discussion:

Motion: **REP. PARKER moved that HB 46 BE AMENDED.**

Discussion:

There was much discussion regarding the amendments and the bill itself. The committee as a whole could not agree to the language and were wanting additional amendments with more questions to be answered. After much deliberation; the committee decided to rescind action until later after REP. PARKER could make some changes to the bill and amendments.

Motion/Vote: **REP. CLARK moved that ACTION BE POSTPONED ON HB 46 UNTIL A LATER DATE. Motion carried unanimously by voice vote.**
{Tape: 3; Side: B; Approx. Time Counter: 381 - 500}
{Tape: 4; Side: A; Approx. Time Counter: 0 - 156}

ADJOURNMENT

Adjournment: 12:14 P.M.

_____
REP. DIANE RICE, Chairman

_____
PAM SCHINDLER, Secretary

DR/ps

Additional Exhibits:

EXHIBIT(juh16aad0.PDF)

MINUTES

MONTANA SENATE
59th LEGISLATURE - REGULAR SESSION

COMMITTEE ON JUDICIARY

Call to Order: By **CHAIRMAN MIKE WHEAT,** on March 2, 2005 at 8:05 A.M., in Room 303 Capitol.

ROLL CALL

Members Present:
Sen. Mike Wheat, Chairman (D)
Sen. Aubyn Curtiss (R)
Sen. Jon Ellingson (D)
Sen. Jesse Laslovich (D)
Sen. Dan McGee (R)
Sen. Jeff Mangan (D)
Sen. Lynda Moss (D)
Sen. Jerry O'Neil (R)
Sen. Gerald Pease (D)
Sen. Gary L. Perry (R)
Sen. Jim Shockley (R)

Members Excused: Sen. Brent R. Cromley (D)

Members Absent: None.

Staff Present: Valencia Lane, Legislative Branch
Mari Prewett, Committee Secretary

Please Note. These are summary minutes. Testimony and discussion are paraphrased and condensed.

Committee Business Summary:

Hearing & Date Posted:	HB 46, 2/24/2005; HB 205, 2/24/2005; HB 307, 2/24/2005; HB 66, 2/24/2005; HB 128, 2/24/2005; HB 40, 2/24/2005
Executive Action:	HB 66; HB 128

HEARING ON HB 46

Opening Statement by Sponsor:

REP. JOHN PARKER (D), HD 23, said that HB 46 would have a deterrent effect because it explicitly makes it a crime for an individual to negligently kill another person while driving under the influence of alcohol. He said that the definition of "negligent homicide" is very broad and largely designed to prevent a tree-spiking problem emerging in the early 1990s. HB 46 requires a prosecutor to prove both negligent homicide and driving under the influence. If a conviction is obtain, the penalty would be a maximum of 30 years instead of 20 years.

{Tape: 1; Side: A; Approx. Time Counter: 4.1 - 15.4}

Proponents' Testimony:

Ali Bovingdon, Attorney General's Office, said that the Department of Justice (DOJ) believes that HB 46 would be another strong deterrent against drinking and driving. She urged the Committee's support.

Bill Muhs, Mothers Against Drunk Driving (MADD), provided written comments in support of HB 46.

EXHIBIT(jus46a01)

Kris Minard, Citizen, said that tough laws make good deterrents, and she hoped that the Committee would reinforce the reality that when a drunk driver gets behind the wheel of a car, it is no accident. She urged the Committee's support of HB 46.

Opponents' Testimony: None.

Informational Testimony: None.

Questions from Committee Members and Responses:

SEN. JESSE LASLOVICH, SD 43, asked why the language "the imposition of a sentence may not be deferred" was added. **REP. PARKER** said that the language was meant to give HB 46 some "teeth". Victims of drunk drivers expressed a deep concern about this issue. Their loved ones will never come back, and yet, the drunk driver has the ability to have his or her sentence discharged.

SEN. JERRY O'NEIL, SD 3, asked why there was no fiscal impact when the sentence is increased from 20 years to 30 years. **REP.**

PARKER said that during the last negligent homicide case that he presented, the individual was sentenced as a persistent felony offender and given 35 years without parole because of his background. However, the defense attorney presented a thorough memorandum showing that no offender convicted of negligent homicide had ever been given more than 10 years. **REP. PARKER** felt that the reason that there was no fiscal impact was because negligent homicide statutes already exists.

SEN. JIM SHOCKLEY, SD 45, said that he defended a negligent homicide and the person was found not guilty. The testimony was that the driver was drunk, but that drunk or sober, the accident would have happened anyway because there was no way that it could have been avoided. He asked if that person would be convicted under HB 46. **REP. PARKER** said that HB 46 requires a higher standard of proof; i.e., a negligent homicide and a DUI. Criminal negligence is a far higher standard than civil negligence and is a gross deviation from the ordinary standard of care. Being drunk, alone, as heinous as that might be, would not be enough to sustain a conviction beyond a reasonable doubt.

Closing by Sponsor:

REP. PARKER said that he was most interested in the future treatment of drunk driving offenders who kill other people on Montana's roadways. It is an abomination in criminal law that a person in that situation could ever be back in court on a misdemeanor DUI. It is offensive and a failure in the system to not provide adequate and accurate accountability and treatment options. He urged the Committee's support of HB 46.

HEARING ON HB 205

{Tape: 1; Side: A; Approx. Time Counter: 15.4 - 16.9}

Opening Statement by Sponsor:

REP. JOHN PARKER (D), HD 23, said that HB 205 was requested by the Montana Supreme Court and requires that bond forfeitures in felony cases be deposited in the general fund rather than the treasury of the city or county. It puts the money where the function is.

Proponents' Testimony:

{Tape: 1; Side: A; Approx. Time Counter: 16.9 - 18.4}

Beth McLaughlin, Support Services Director, Supreme Court Administrator's Office, said that HB 205 is a housekeeping bill. During the District Court Council's work, it discovered that bond forfeitures in felony cases were still going to the city or county general fund when, in fact, they should be going to the state general fund to support the expenses of the Court or the Public Defender if the person had been assigned counsel. She urged the Committee's support of HB 205.

Opponents' Testimony: None.

Informational Testimony: None.

Questions from Committee Members and Responses: None.

Closing by Sponsor:

REP. PARKER requested the Committee's support of HB 205.

HEARING ON HB 307

{Tape: 1; Side: A; Approx. Time Counter: 18.4 - 25.5}
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Opening Statement by Sponsor:

REP. JOHN PARKER (D), HD 23, said that HB 307 creates a new criminal offense of money laundering. It attempts to tackle the events that make crime profitable at the point at which criminal money enters the main stream economy.

Proponents' Testimony:

Pat Brinkman, Great Falls Police Department, said that part of the problem is the huge volume of cash being made from the sale of illegal drugs. The goal of every drug transaction is to make money. Detecting and seizing money derived from drug trafficking is critical because it disables criminals by cutting off their ability to finance future drug activity.

{Tape: 1; Side: B; Approx. Time Counter: 7.2 - 14.9}

Detective Sergeant Brian Fulford, Kalispell, provided written comments in support of HB 307.

EXHIBIT(jus46a02)

Jim Kembel, MT Association of Chiefs of Police, and Jim Smith, MT Sheriff's and Peace Officers Association (MSPOA), spoke in support of HB 307.

Mike Batista, Administrator, Division of Criminal Investigation, DOJ, said that there are many money laundering cases that occur in Montana that do not meet the federal threshold or there are insufficient federal resources to investigate and prosecute these cases. He added that although federal prosecutors may look at the drug end of an investigation for prosecution, the money laundering issues have to be addressed by state investigators and prosecutors. HB 307 will provide a vehicle to do that.

Karen Powell, Deputy Securities Commissioner, State Auditor's Office (SAO), said that the SAO is a criminal justice agency, and it both prosecutes and assists in the prosecution of financial crimes. Over the past few years, the SAO has received information from Montana citizens involving insurance and securities transactions that could involve money laundering. The SAO stands in support of HB 307 to ensure that there is a definition of money laundering in statute.

Opponents' Testimony: None.

Informational Testimony: None.

Questions from Committee Members and Responses:

{Tape: 1; Side: B; Approx. Time Counter: 14.7 - 25.3}

SEN. AUBYN CURTISS, SD 1, asked if assets could be seized without guilt being established. **REP. PARKER** said that the forfeiture provision under HB 307 are modeled after the drug forfeiture petitions under existing law. It does not require guilt, as such, because rather than it being a criminal proceeding, the forfeiture proceeding is a civil matter.

SEN. MCGEE questioned the meaning of money laundering. **REP. PARKER** said that "money laundering" is the movement of money from an illegally obtained source into the main stream of business finance where it appears to come from a legal source.

SEN. JON ELLINGSON, SD 49, questioned how the forfeiture sections of HB 307 worked together. **REP. PARKER** said that there is a number of areas in criminal law where there is a civil proceeding that runs on a parallel track to a criminal proceeding. For example, in a DUI case, there is the underlying criminal offense

that parallels the civil hearing that determines whether a driver's license is seized. HB 307 provides a similar situation in forfeiture matters. There is the criminal track where guilt has to be proven beyond a reasonable doubt, while the asset forfeiture hearing is a civil matter. It is related but runs on a parallel track. **SEN. ELLINGSON** said that he understood the intent of HB 307, but did not believe that HB 307 accomplished it. He suggested further work on the bill to remove the confusion. His problem is forfeiture provisions without a finding of guilt.

{Tape: 1; Side: B; Approx. Time Counter: 25.3 - 29.1}

SEN. O'NEIL asked if he were to sell a car in California without the inspection permit, which is unlawful under the laws of California, would the money he received from the car be subject to forfeiture because it is an unlawful act. **REP. PARKER** said that there would have to be a nexus of criminal activity within Montana to implicate Montana's criminal jurisdiction. If all of the criminal activity happens in California, it would not trigger HB 307. However, if the crime is committed in California and the money from that criminal activity is laundered in Montana, it would trigger HB 307.

{Tape: 2; Side: A; Approx. Time Counter: 0.1 - 11.7}

SEN. GARY PERRY, SD 35, asked, if a person violates the law in another state, would there need to be a violation of a Montana law in order for HB 307 to take effect on that person. **REP. PARKER** said that there are specific statutes in criminal code governing when Montana's criminal jurisdiction comes to play. For the purpose of HB 307, if a criminal activity takes place outside of the state, HB 307 would only come into play if some of the assets are laundered within Montana's boundaries. **SEN. PERRY** questioned whether the language "any activity that is unlawful under the laws of any state" was too broad for Montana law. **REP. PARKER** said that he was not concerned about the "any activity" language because the activity has to be something that violates the law of another state or the United States.

SEN. MICHAEL WHEAT, SD 32, said that his concern is that the term "money laundering" could apply to almost every transaction. He asked about the victim to the crime and whether HB 307 should include language "unless the money can be traced back to the victim of a crime, the court can forfeit". **REP. PARKER** viewed specific language that gives restitution higher priority over forfeiture as a friendly amendment.

Closing by Sponsor:

REP. PARKER said that HB 307 was targeted to address a specific group of "bad actors" who are higher up the criminal food chain. HB 307 is designed to implicate a very wide range of criminal finance activities, and he hoped it would have a significant impact on crime in Montana communities. He urged the Committee's support of HB 307.

HEARING ON HB 66

{Tape: 2; Side: A; Approx. Time Counter: 11.7 - 15.7}

Opening Statement by Sponsor:

REP. LARRY JENT (D), HD 64, said that HB 66 addresses discretionary credit against a fine for time served if jail time and a fine are imposed. If HB 66 is passed, jail time credit would become mandatory. If a defendant spends a certain amount of time in jail before the Judge's sentence, the defendant gets that amount of credit against his or her sentence. It is also discretionary if the Judge wants to give credit against a fine.

Proponents' Testimony:

Ali Bovingdon, DOJ, said that HB 66 arises from the Supreme Court case State of Montana v. Michael Fisher. In interpreting 46-18-403, MCA, the Supreme Court concluded that the credit against the fee was mandatory and that the section of law was not a discretionary section that a judge could apply. HB 66 clarifies that there is a mandatory credit for incarceration prior to conviction but that any credit against a fee is discretionary on the part of the Judge.

{Tape: 2; Side: A; Approx. Time Counter: 15.7 - 19.1}

Harold Blattie, MT Association of Counties (MACo), said that, independent of the other stakeholders, MACo has also worked on 46-18-403, MCA. The issue with the counties is who has to pay the costs of the confinement. When a judge uses the credit to offset the fine, not only are the local taxpayers losing the fine as revenue, but they are also having to pay for the cost of incarceration. He provided a copy of a resolution adopted by the MACo membership showing the exact wording as contained in HB 66.

EXHIBIT(jus46a03)

Jim Smith, MSPOA, spoke in support of HB 307

Opponents' Testimony: None.

Informational Testimony: None.

Questions from Committee Members and Responses:

SEN. SHOCKLEY asked if the Board of County Commissioners setting the rate was a problem. **REP. JENT** said, no, that the expenses of running a jail vary from county to county just as the cost of living expenses vary.

Closing by Sponsor:

REP. JENT said that HB 307 was a simple bill, and he urged the Committee's support.

HEARING ON HB 128

{Tape: 2; Side: A; Approx. Time Counter: 19.1 - 21.4}

Opening Statement by Sponsor:

REP. LARRY JENT (D), HD 64, said that HB 128 allows the National Guard to decommission a commissioned officer who has been convicted of a felony without going through a complicated and lengthy administrative proceeding to prove that the officer is guilty of what he has already been convicted of in Court. HB 307 also allows for the withdrawal of federal recognition of the officer's commission.

Proponents' Testimony:

Stan Putnam, Assistant Adjutant General, Department of Military Affairs, provided written comments in support of HB 128.

EXHIBIT(jus46a04)

Opponents' Testimony: None.

Informational Testimony: None.

Questions from Committee Members and Responses: None.

Closing by Sponsor:

REP. JENT urged the Committee's support of HB 128.

HEARING ON HB 40

{Tape: 2; Side: B; Approx. Time Counter: 9.9 - 17.1}

Opening Statement by Sponsor:

REP. CHRISTOPHER HARRIS (D), HD 66, said that HB 40 expands coverage of civil and criminal false claims against the state and provides the tools to go after anyone who engages in a reverse false claim against the state.

Proponents' Testimony:

Ali Bovingdon, DOJ, provided a fact sheet explaining the intent of HB 40.

EXHIBIT(jus46a05)

Ms. Bovingdon said that rather than a claim based on an entity overcharging a state agency, a reverse false claim involves a fraud that leads to an entity paying the state less than it actually should, such as in the case of State of Montana v. Abbott Laboratories. Montana joined Nevada in suing a number of pharmaceutical manufacturers charging that the company's drug pricing practices had defrauded the state. The Medicaid fraud portion of the lawsuit is still pending, but the reverse false claims portion was dismissed by the federal judge who determined that Montana's current statute governing false claims did not cover a reverse false claim. HB 40 adds a reverse false claims provision that is modeled after the federal law. It allows civil and criminal prosecutions of reverse false claims and allows the state to establish liability when claims are made that lead to financial underpayment to a state agency.

Opponents' Testimony: None.

Informational Testimony: None.

{Tape: 2; Side: B; Approx. Time Counter: 17.1 - 20.9}

Questions from Committee Members and Responses:

SEN. O'NEIL asked if HB 40 applied if a person filed a claim for income taxes if the person owes less taxes than what the state believes the person owes. **REP. HARRIS** said, no, the Department of Revenue (DOR) has its own laws which are very comprehensive in terms of criminal and civil violations. If there is a tax

violation of any kind, it is handled by the Department. HB 40 is separate and apart from anything having to do with the DOR codes.

SEN. SHOCKLEY asked if legal costs included attorney fees. **Ms. Bovingdon** said that legal costs do not refer to attorney fees, only the actual costs of the litigation. **SEN. SHOCKLEY** asked if the Title of HB 40 could encompass what is customary attorney fees, costs, and expenses. **REP. HARRIS** said it may, and could be amended to include attorney fees.

Closing by Sponsor:

REP. HARRIS urged the Committee's favorable support of HB 40.

EXECUTIVE ACTION ON HB 205

{Tape: 2; Side: B; Approx. Time Counter: 20.9 - 23.4}

Motion: SEN. MCGEE moved that HB 205 DO PASS.

Discussion: SEN. O'NEIL said that he has requested an amendment for HB 205. He requested that Executive Action be postponed.

SEN. MCGEE withdrew his motion.

EXECUTIVE ACTION ON HB 66

{Tape: 2; Side: B; Approx. Time Counter: 23.8 - 28.2}

Motion: SEN. MANGAN moved that HB 66 BE CONCURRED IN.

Discussion: SEN. PERRY was confused about the language in HB 66. **SEN. WHEAT** said, if someone sits in jail before they are sentenced, the Court must give them credit for time served. However, if a person is in jail for 30 days but were sentenced to 20 days plus a fine, under current law, the person must be given credit against the fines on a per-day basis. HB 66 give the Court the discretion to do that. Currently, because the Court has to give credit for time served against fines, local governments were losing money. **SEN. PERRY** asked, if a person supplies bail, could the reverse be true, that a Judge could allow a credit for monetary value against days of incarceration. **SEN. WHEAT** said, no, because the person is not in jail. The only way a person can get credit for incarceration is if the person is incarcerated. If a person posts bail, the person is not incarcerated. **SEN. JEFF**

MANGAN, SD 12, explained that the credit is applied upon conviction.

SEN. SHOCKLEY said that as part of the sentence, some courts include the costs of incarceration. She asked if it would create a problem. **Valencia Lane, Legislative Services Division (LSD),** said that some courts do include the cost of incarceration in sentencing, but she was unsure whether there should be a concern. HB 66 applies to incarceration before conviction.

SEN. O'NEIL said that if someone is in jail for three weeks and they post bail and are released, according to HB 66, the person cannot be given credit for the three weeks served. **Ms. Lane** said that HB 66 applies only to those who do not post bail.

Vote: SEN. MANGAN'S motion that HB 66 DO PASS carried unanimously by voice vote. SENATORS MOSS and LASLOVICH voted aye by proxy. SEN. MANGAN will carry the bill.

EXECUTIVE ACTION ON HB 128

{Tape: 3; Side: A; Approx. Time Counter: 0.6 - 2.2}

Motion/Vote: SEN. MCGEE moved that HB 128 BE CONCURRED IN. Motion carried unanimously by voice vote. SENATORS MOSS and LASLOVICH voted aye by proxy. SEN. WHEAT will carry the bill.

ADJOURNMENT

Adjournment: 9:40 A.M.

_____
SEN. MIKE WHEAT, Chairman

_____
MARI PREWETT, Secretary

_____
LOIS O'CONNOR, Transcriber

MW/mp

Additional Exhibits:

EXHIBIT(jus46aad0.PDF)

MINUTES

MONTANA SENATE
59th LEGISLATURE - REGULAR SESSION

COMMITTEE ON JUDICIARY

Call to Order: By **CHAIRMAN MIKE WHEAT,** on March 24, 2005 at 9:08 A.M., in Room 303 Capitol.

ROLL CALL

Members Present:
Sen. Mike Wheat, Chairman (D)
Sen. Brent R. Cromley (D)
Sen. Aubyn Curtiss (R)
Sen. Jon Ellingson (D)
Sen. Jesse Laslovich (D)
Sen. Jeff Mangan (D)
Sen. Dan McGee (R)
Sen. Lynda Moss (D)
Sen. Jerry O'Neil (R)
Sen. Gerald Pease (D)
Sen. Gary L. Perry (R)
Sen. Jim Shockley (R)

Members Excused: None.

Members Absent: None.

Staff Present: Valencia Lane, Legislative Branch
Mari Prewett, Committee Secretary

Please Note. These are summary minutes. Testimony and discussion are paraphrased and condensed.

Committee Business Summary:
Hearing & Date Posted:
Executive Action: HJ 15, HB 40, HB 280, HB 91, HB 98, HB 222

EXECUTIVE ACTION ON HJ 15

Motion: **SEN. CROMLEY moved that HJ 15 BE CONCURRED IN.**

Discussion: **SEN. O'NEIL** asked what was going to happen if they found that minorities were participating in more crimes than non-minorities. He further asked if that meant they were not going to incarcerate the minorities at a greater rate than non-minorities, even though they had a greater rate of committing crimes.

SEN. CROMLEY responded the sentence in question did not relate to numbers rather it relates to whether or not the minorities are treated differently. He went on to say that regardless of the numbers, it was stating that all persons within the criminal justice system will be treated alike and not to their detriment simply because of their race.

SEN. CURTISS asked **SEN. PEASE** to explain what use had been made of the earlier report and what the Resolution would accomplish that had not already been done. **SEN. PEASE** replied the resolution was trying to address the disproportionate numbers to see why there was such a high rate of incarceration for Native Americans. He then talked about the percentage of Native Americans living off of the reservations and the high percentage of those individuals being incarcerated.

SEN. CURTISS asked if the statistics were used in any way to provide legislation that would address some of the concerns. She went on to say they could study problems, however, if it did not provide guidance for some action, what was the value of the study.

Motion: **SEN. MANGAN moved to strike the word "determine" on Page 2, Line 5.**

SEN. MANGAN explained his proposed conceptual amendment.

CHAIRMAN WHEAT asked **Ms. Lane** if she had understood the conceptual amendment. **Ms. Lane** replied that she had.

Discussion: **SEN. MCGEE** stated he felt there were basic fundamental cultural issues and significant environmental issues that address why there appears to be a disparate number of the Indian population in the prison system. He went on to say that he did not believe it had anything to do with how the courts or attorneys were processing the cases. He continued saying they could study the problem but he did not think they would study the difference in cultures between the Indians and the white man that

are part of the reason people act the way they do. He concluded saying the amendment was fine, however, he did not feel it was necessary.

SEN. PEASE reminded the Committee there was a disproportionate amount of minorities being incarcerated. He went on to say it was true the Native Americans were brought up differently. He further stated he felt there was real concern with the incarceration percentages for minorities, especially in the youth courts. He concluded stating he felt the study could be a very good tool to help solve the problem.

CHAIRMAN WHEAT asked **SEN. PEASE** if he had a preference as to which interim committee would deal with the issue. **SEN. PEASE** replied he would like to see it studied by the State and Tribal Relations Committee.

Vote: Motion that the CONCEPTUAL AMENDMENT TO HJ 15 BE ADOPTED carried 11-1 by voice vote with SEN. MCGEE voting no.

Motion: SEN. CROMLEY moved that HJ 15 BE CONCURRED IN AS AMENDED.

Discussion: SEN. O'NEIL stated he felt they should also report the results of the study to the Indian Nations in Montana, the Bureau of Indian Affairs and also to Montana's U.S. Congressmen. He suggested the language be added on Page 2, Lines 13 and 14.

SEN. PEASE stated that he felt the proposed amendment was a very good idea.

Motion: SEN. O'NEIL moved that THE CONCEPTUAL AMENDMENT BE ADOPTED.

CHAIRMAN WHEAT asked **Ms. Lane** if she understood the proposed amendment. **Ms. Lane** clarified where the amendment would be inserted and the language to be used.

SEN. PEASE stated that they needed to remember the Little Shell Band needed to be notified as well.

Vote: Motion that THE CONCEPTUAL AMENDMENT BE ADOPTED carried 12-0 by voice vote.

Motion: SEN. CROMLEY moved that HJ 15 BE CONCURRED IN AS AMENDED.

Discussion: SEN. PERRY expressed his support for HJ 15.

CHAIRMAN WHEAT indicated he agreed with **SEN. PERRY.** He further stated that there definitely was a problem, it needed to be addressed, and it needs something to be done about it.

SEN. PEASE stated that maybe the resolution should go to the Law and Justice Interim Committee where it could go to a Subcommittee for study.

SEN. MOSS spoke in support of HJ 15.

Vote: Motion that HJ 15 BE CONCURRED IN AS AMENDED carried 11-1 by voice vote with SEN. MCGEE voting no.

SEN. PEASE will carry HJ 15 on the floor of the Senate.

{Tape: 1; Side: A; Approx. Time Counter: 0 - 24.9}

EXECUTIVE ACTION ON HB 40

Motion: SEN. SHOCKLEY moved that HB 40 BE CONCURRED IN.

Amendment HB004003.avl was distributed to the Committee and is attached as Exhibit 1.

EXHIBIT(jus65a01)

Valencia Lane stated the amendment had been requested by the Department of Justice and explained the purpose of the amendment. She then reminded the Committee they had already adopted HB004002.avl and re-explained that amendment.

Motion: SEN. WHEAT moved that AMENDMENT NO. HB004003.AVL BE ADOPTED.

Discussion:

SEN. O'NEIL asked **Ms. Lane** if the amendment would apply to a civil penalty for false statement on taxes, but would not on a criminal penalty. **Ms. Lane** replied there were already provisions in the civil laws under Title 39, Chapter 71 dealing with Workers' Comp, Title; Title 15 and 16 with tax laws and under National Resources and Conservation Acts under Title 77. Therefore, it was felt exempting those from this particular penalty was appropriate.

SEN. SHOCKLEY left the meeting.

Vote: Motion that AMENDMENT NO. HB004003.AVL BE ADOPTED carried unanimously by voice vote, with SEN. SHOCKLEY voting aye by proxy.

Motion/Vote: SEN. WHEAT moved that HB 40 BE CONCURRED IN AS AMENDED. Motion carried unanimously by voice vote, with SEN. SHOCKLEY voting aye by proxy.

SEN. CROMLEY will carry HB 40 on the floor of the Senate.

{Tape: 1; Side: B; Approx. Time Counter: 0 - 5.3}

EXECUTIVE ACTION ON HB 280

Motion: SEN. MANGAN moved that HB 280 BE CONCURRED IN.

Discussion: Amendment No. HB028001.avl was distributed to the Committee and is attached as Exhibit 2.

EXHIBIT(jus65a02)

Motion: SEN. WHEAT moved that AMENDMENT HB028001.AVL BE ADOPTED.

Discussion:

Valencia Lane explained the intent of the amendments.

CHAIRMAN WHEAT explained the reason the amendment had been brought forward.

SEN. MANGAN indicated he was going to oppose the amendments. He went on to say he felt the amendments would dramatically change the reason for the bill.

SEN. MCGEE stated that 1 and 3 did not bother him, however, 2 did and explained why. He suggested segregating 2 from the amendment.

SEN. CROMLEY asked either **SEN. SHOCKLEY** or **SEN. ELLINGSON** if a person involved in a misdemeanor, going for arraignment, would have counsel. **SEN. SHOCKLEY** responded that arraignment was when the individuals were arrested on Saturday night, brought to court on Monday morning, allowed to only plea not guilty, and then provided with an opportunity to hire an attorney if they so desired.

CHAIRMAN WHEAT stated it was his understanding that an arraignment was when the individual was brought before the Judge, the charges were read to them and at that point in time counsel would be appointed, if the individual was unable to obtain counsel of his/her own.

SEN. CROMLEY responded that if that was the case he saw a problem with paragraph 1 of the amendment because of the requirement that the individual would have to sign the agreement in the presence of an attorney.

SEN. SHOCKLEY stated that an arraignment was simply the reading of the charges and entry of a plea. **SEN. SHOCKLEY** continued saying he did not believe the emphasis should be on what was most convenient for the county or the state. He went on to say that if the system was going to mean anything you cannot treat the offenders like they were nothing but a piece of wood. He added the offender needed to be treated like an individual or the person would not feel as if they had been treated fairly.

SEN. O'NEIL stated he did not feel the bill would apply to arraignments. He then asked about the waiver that needed to be signed and if an individual had more than one counsel, would all of the individuals counsel have to be present. **CHAIRMAN WHEAT** responded that only one of the individuals counsel would need to be present.

SEN. LASLOVICH referred to a fax he had received from District Court Judge Wayne Phillips in response to the amendments. He went on to say that the fax indicated the district court judges were opposed to the amendments. He added that he would oppose the amendments.

SEN. PERRY asked **SEN. MCGEE** about SB 146 and whether or not in the bill a defendant can waive his right to counsel. **SEN. MCGEE** responded that it was not part of the bill.

CHAIRMAN WHEAT added that a defendant could waive his right to counsel. He went on to say in some instances the court overrules the waiver of counsel and appoints counsel anyway.

{Tape: 1; Side: B; Approx. Time Counter: 5.3 - 22.5}

SEN. PERRY remarked on the amendments making it mandatory that defendants have counsel.

CHAIRMAN WHEAT responded to **SEN. PERRY'S** concerns.

SEN. PERRY pointed out the three amendments were making the assumption there would absolutely be counsel. **CHAIRMAN WHEAT** responded that a defendant would have the right to refuse counsel.

SEN. PERRY further addressed his concerns with the amendments.

SEN. CROMLEY stated he agreed with **SEN. PERRY** that the amendments required the presence of counsel. He further talked about possibly amending the amendments.

SEN. ELLINGSON stated as he understood the amendment counsel would have to be present if they were going to use the audio/visual communication. He further stated he would be uncomfortable having any defendant appear before a Judge using the audio/visual communication without being represented by counsel.

SEN. CROMLEY expressed his concern regarding persons being required to have counsel prior to their first appearance when that is the time where most individuals would be appointed counsel.

SEN. ELLINGSON expressed further concerns with the amendment and his fear that they could be infringing upon the individual's first amendment rights.

SEN. SHOCKLEY indicated that he did not feel paragraph 1 of the amendment would work and explained his reasons.

SEN. O'NEIL talked about his concerns regarding the amendment.

Motion/Vote: SEN. MCGEE CALLED THE QUESTION ON AMENDMENT NO. HB028001.AVL. Motion failed 5-7 by roll call vote with SEN. ELLINGSON, SEN. MOSS, SEN. PEASE, SEN. SHOCKLEY, and SEN. WHEAT voting aye.

CHAIRMAN WHEAT stated they were back on HB 280.

Discussion: SEN. SHOCKLEY indicated he felt it was too impersonal. He went on to say when a person is sentenced he should be in the same room as the Judge, looking him in the eye. He concluded stating he would vote against HB 280.

SEN. O'NEIL asked if the bill would apply to someone that was sent to Warm Springs for evaluation or not. **CHAIRMAN WHEAT** replied in most instances persons sent to Warm Springs would not be coming back to the court for sentencing, they would being coming back to court for a hearing on the reasons for being sent

to Warm Springs in the first place. **SEN. O'NEIL** and **CHAIRMAN WHEAT** discussed the intent of the bill further.

SEN. LASLOVICH expressed his support for HB 280.

SEN. SHOCKLEY stated his objection to the bill.

SEN. ELLINGSON indicated he would oppose the bill because of the language on Page 4, Section 4 which allows for the absence of the defendant at the time of sentencing.

SEN. MCGEE stated he felt the defendants rights were protected under HB 280. He added he would vote in favor of HB 280.

SEN. CROMLEY asked if there were any other proponents present at the hearing other than the representative from the Attorney General's Office. **CHAIRMAN WHEAT** responded "No."

SEN. PERRY talked about his concerns with regard to HB 280.

SEN. MANGAN clarified for the Committee how the audio/visual communication system works with regard to its use in the courtroom.

SEN. O'NEIL stated he would vote for the bill, however, he did have concerns.

Vote: Motion that HB 280 BE CONCURRED IN carried 7-5 by voice vote with SEN. CROMLEY, SEN. CURTISS, SEN. ELLINGSON, SEN. PERRY, and SEN. SHOCKLEY voting no.

SEN. MANGAN will carry HB 280 on the floor of the Senate.

{Tape: 2; Side: A; Approx. Time Counter: 0 - 22}

EXECUTIVE ACTION ON HB 91

WHEAT moved that HB 91 BE CONCURRED IN.

Discussion: CHAIRMAN WHEAT asked **SEN. PERRY** to explain the difference between HB 91 and SB 80. He went on to say the only difference he noticed was that in SB 80 a violation of the section was not a criminal offense. In HB 91 it indicates that a violation of the section by a passenger would not be charged against the passenger's driving record.

SEN. PERRY stated the big difference was the reference to what the insurance companies were calling the masking text that hid the offense from the insurance companies and prevented them from using the offense for purposes of rating the individual. He went on to say he felt this masking text was a good thing and helped the bill pass.

CHAIRMAN WHEAT stated he would like to see both SB 80 and HB 91 pass.

SEN. SHOCKLEY responded, because there were two bills SB 80 did not have as good of a chance to pass. He then moved to table HB 91.

Motion/Vote: SEN. SHOCKLEY moved that HB 91 BE TABLED. Motion carried 8-4 by roll call vote with SEN. CROMLEY, SEN. ELLINGSON, SEN. MOSS, and SEN. WHEAT voting no.

{Tape: 2; Side: A; Approx. Time Counter: 22 - 28}

EXECUTIVE ACTION ON HB 98

Motion: SEN. MANGAN moved to remove HB 98 from the Table.

Discussion: SEN. SHOCKLEY stated even though he had been beaten up in the newspapers over his vote on HB 98 he had no intention of changing his vote. He went on to say he felt it was a bad idea and explained further why he could not support the bill.

SEN. O'NEIL stated he would continue to vote no on HB 98 because of an individual's right not to incriminate themself.

SEN. CROMLEY indicated that he had concerns regarding multiple DUIs. He added that HB 98 was addressing first time DUI offenders and he did not feel that this was where the emphasis needed to be placed.

SEN. ELLINGSON stated he would vote to take HB 98 off of the table and explained why. He then talked about an amendment he would propose should HB 98 be taken off of the table.

SEN. MANGAN stated there were things that could be done with the bill to make it better. He added he felt it was worth having further discussion on HB 98.

Vote: Motion to TAKE HB 98 OFF OF THE TABLE failed 6-6 by roll call vote with SEN. CROMLEY, SEN. ELLINGSON, SEN. MANGAN, SEN. MOSS, SEN. PEASE, and SEN. WHEAT voting aye.

{Tape: 2; Side: B; Approx. Time Counter: 0 - 8.5}

EXECUTIVE ACTION ON HB 730

Motion: SEN. CURTISS moved that HB 730 BE CONCURRED IN.

Discussion: SEN. SHOCKLEY asked if HB 730 was **REP. LANGE'S** bill. **CHAIRMAN WHEAT** responded that it was.

SEN. SHOCKLEY indicated that there were some amendments for HB 703 and he was also supposed to speak with **SEN. WILLIAMS** regarding a compromise, therefore, he would like to put HB 730 off to another day, so long as **SEN. CURTISS** would agree.

SEN. CURTISS stated she was afraid they might run out of time and she did not want the bill to fall through the cracks.

CHAIRMAN WHEAT stated that HB 730 would be the first bill they would deal with on March 29, 2005, therefore, everyone needed to be ready to proceed.

{Tape: 2; Side: B; Approx. Time Counter: 8.5 - 10.3}

EXECUTIVE ACTION ON HB 222

Motion: SEN. MCGEE moved that HB 222 BE CONCURRED IN.

An amendment to HB 222 was distributed to the Committee and is attached as Exhibit 3.

EXHIBIT(jus65a03)

Motion: SEN. MCGEE moved that AMENDMENT NO. HB022201.AVL BE ADOPTED.

Discussion: SEN. MCGEE explained the amendment to the Committee.

SEN. ELLINGSON indicated he would not vote for the amendment or the bill. He then talked about the meaning of negligence and what constitutes being negligent.

SEN. MCGEE referred to Lines 26 and 27 on Page 1 and discussed the definitions provided.

SEN. MANGAN indicated he would like to segregate the two paragraphs of the amendment.

Motion: **SEN. MCGEE** moved NUMBER 2 of AMENDMENT NO. HB022201.AVL.

Discussion: **SEN. LASLOVICH** asked **SEN. MCGEE** why they were inserting the language, "resulting from an incident ... that involves...", why not say "a traumatic condition means an acute condition that involves a significant risk of death or has a substantial likelihood of precipitating medical complications or permanent disability". **SEN. MCGEE** asked the Committee if they would permit **Mr. Ebsery** to respond to **SEN. LASLOVICH'S** question.

Mr. Ebsery, Billings St. Vincent's and other hospitals, explained this amendment was written to be as inclusive as possible to define what an acute condition would be and what would be considered a traumatic condition.

SEN. LASLOVICH indicated that he liked (a) and (b) of paragraph number 2 of the amendment but not all of the other language.

SEN. MCGEE proposed amending the language in paragraph 2 of Amendment No. HB022201.avl to read "means an acute condition resulting from an incident that:", then strike the next three lines. He continued saying paragraph 2 of Amendment No. HB022201.avl would read as follows: "For purposes of this section traumatic condition means an acute condition resulting from an incident that: (a) involves a significant risk of death or (b) has a substantial likelihood ..."

Valencia Lane explained the best way to amend the amendment.

Motion: **SEN. MCGEE moved that AMENDMENT NO. HB022201.AVL BE AMENDED as discussed.**

Discussion: **SEN. O'NEIL** expressed some concerns with what would and would not be considered a traumatic condition.

{Tape: 2; Side: B; Approx. Time Counter: 10.3 - 26}

SEN. O'NEIL, SEN. MCGEE and **CHAIRMAN WHEAT** discussed the liability of a doctor should a patient die, the remedy for recovery and the cap on the amount of recovery should a lawsuit be brought forth and the doctor be found negligent. They further discussed the types of conditions which would be covered under HB 222.

Motion/Vote: SEN. MANGAN CALLED THE QUESTION ON AMENDMENT NO. HB022201.AVL AS AMENDED. Motion carried 9-3 by voice vote with SEN. CROMLEY, SEN. ELLINGSON, and SEN. WHEAT voting no.

Motion: SEN. MCGEE moved that HB 222 BE CONCURRED IN AS AMENDED.

Motion: SEN. MCGEE moved that PARAGRAPH 1 OF AMENDMENT HB022201.AVL BE ADOPTED.

Discussion: SEN. ELLINGSON indicated he would vote against the amendment because of the fact it focuses on medical liability insurance.

SEN. CROMLEY expressed his objections to the amendment.

SEN. O'NEIL talked about his concerns with the bill.

CHAIRMAN WHEAT stated he would resist the amendment and explained his reasons for doing so.

SEN. MCGEE asked the Committee to vote in favor of the amendment.

Vote: Motion that AMENDMENT NO. HB022201.AVL BE ADOPTED failed 5-7 by roll call vote with SEN. CURTISS, SEN. LASLOVICH, SEN. MCGEE, SEN. O'NEIL, and SEN. PERRY voting aye.

CHAIRMAN WHEAT reminded the Committee they were back on the bill as originally amended.

SEN. ELLINGSON reiterated that he would be voting against the bill and provided the Committee with an example.

SEN. MANGAN indicated his support for HB 222 because of the compelling testimony he had heard.

SEN. SHOCKLEY stated they were not just talking about the $100,000.00 cap.

SEN. CROMLEY talked about his personal experiences with access to emergency rooms and emergency room treatment. He continued saying he was upset with the attempt to put a valuation on every possible type of injury and provided some examples. He concluded saying he would be voting against the bill.

SEN. PERRY expressed his support for HB 222 and responded to comments made by Committee members.

SEN. LASLOVICH stated his views on the idea that premiums for medical malpractice insurance were rising as a result of attorneys taking cases to court and winning large settlements. He then talked about the testimony from the experts with regard to the rising costs for medical malpractice insurance.

{Tape: 3; Side: A; Approx. Time Counter: 0 - 30.2}

SEN. MOSS talked about the testimony they had heard at the hearing on HB 222. She went on to say that because of this testimony she would not be supporting the bill at this time.

SEN. SHOCKLEY said the difference between $250,000.00 and $100,000.00 was not going to make any difference in the premium rates for medical malpractice insurance.

CHAIRMAN WHEAT expressed his views on HB 222 and indicated he could not support the bill. He provided the Committee with information from a report out of Texas with regard to the issue of the costs of medical malpractice insurance. He went on to say the crisis was caused by the insurance companies, not the patients and not the attorneys. He further stated they needed to do something to help the doctors. He concluded saying he could not support HB 222.

Vote: Motion that HB 222 BE CONCURRED IN AS AMENDED failed 4-8 by roll call vote with SEN. LASLOVICH, SEN. MANGAN, SEN. MCGEE, and SEN. PERRY voting aye.

Motion/Vote: SEN. WHEAT moved that HB 222 BE TABLED AND THE VOTE REVERSED. Motion failed unanimously.

{Tape: 3; Side: B; Approx. Time Counter: 0 - 14}

ADJOURNMENT

Adjournment: 11:30 A.M.

_____
SEN. MIKE WHEAT, Chairman

_____
MARI PREWETT, Secretary

MW/mp

Additional Exhibits:

EXHIBIT(jus65aad0.PDF)

EXHIBIT 3
DATE 1/19/05
HB 40

DEPARTMENT OF JUSTICE
HB 40: Including Reverse False Claims (Underpayment) in Montana's False Claims Statute

Reverse False Claims
Rather than a claim based on an entity overcharging a state agency, a reverse false claim involves fraud that leads to an entity paying the state ***less*** than it should.

Montana's Drug Pricing Lawsuit
In 2002, the State of Montana sued a number of pharmaceutical manufacturers, charging that the companies' drug pricing practices defrauded the state, consumers and others of millions of dollars. In *State of Montana v. Abbott Labs, Inc., et al*, the state alleged that the named drug companies engaged in fraud by:

- ***overstating the Average Wholesale Price (AWP)*** of many of their prescription drugs, gouging consumers, taxpayers and the Medicare and Medicaid programs. The federal Medicare program, the state Medicaid program, and certain patients reimburse physicians and pharmacies for hundreds of prescription drugs based on the average wholesale price.
- ***reporting false "Best Prices" used to calculate rebates*** owed to the states, including Montana. Drug companies artificially inflated the "Best Price" of certain drugs by reporting higher prices and excluding discounts and other inducements. As a result, they paid lower rebates to the state, violating the federal Medicaid Rebate Statute and Agreement.

Problems with Montana's False Claims Act
Montana filed suit for both the Best Prices and AWP fraud, partially based on its False Claims Act, MCA §17-8-231. However, federal District Court Judge Saris dismissed the counts. The Court held that the language of Montana's False Claims Act only accounted for claims made for payment to a state agency and did not cover claims that lead to an underpayment (a reverse false claim) to the state.

Proposed Changes
The federal False Claims Act was amended in 1986 to provide for reverse false claims. The language in HB 40 is modeled on that federal legislation. The proposed language will clearly allow:

- civil and criminal prosecution of reverse false claims in Montana
- the state to establish liability when claims are made that lead to a financial underpayment to a state agency

Summary
Whether a person or business makes a false claim or a reverse false claim, it is the citizens of Montana who end up paying. False claims and reverse false claims have the same result – Montana is cheated of financial resources. This bill would clarify that both forms of fraud are punishable under our state law.

HOUSE OF REPRESENTATIVES
Roll Call
JUDICIARY COMMITTEE

DATE 1/19/2005

NAME	PRESENT	ABSENT	EXCUSED
REP. DIANE RICE, CHAIR	X		
REP. RON STOKER, VICE CHAIR	X		
REP. PAUL CLARK, VICE CHAIR	X		
REP. ARLENE BECKER	X		
REP. ROBYN DRISCOLL	X		
REP. GEORGE EVERETT	X		
REP. GAIL GUTSCHE	X		
REP. CHRISTOPHER HARRIS	X		
REP. ROGER KOOPMAN	X		
REP. MIKE LANGE	X		
REP. TOM McGILLVRAY	X		
REP. MARK NOENNIG	X		
REP. ART NOONAN	X		
REP. JOHN PARKER	X		
REP. JON SONJU	X		
REP. JOHN WARD	X		
REP. BILL WILSON	X		
REP. JEANNE WINDHAM	X		

COMMITTEE FILE COPY

TABLED BILL

The **HOUSE JUDICIARY COMMITTEE** TABLED **HB 23**, by motion, on **Wednesday, January 19, 2005**.

(For the Committee)

(Chief Clerk of the House)

1:25 / 1/19
(Time) (Date)

January 19, 2005 Pamela E. Schindler, Secretary Phone: 444-4838

HOUSE STANDING COMMITTEE REPORT

Mr. Speaker:

We, your committee on **Judiciary** recommend that **House Bill 49** (first reading copy -- white) **do pass as amended**.

Signed: Diane Rice
Representative Diane Rice, Chair

And, that such amendments read:

1. Title, page 1, line 11.
Strike: "46-23-508,"

2. Page 3, line 1.
Strike: "ensure that the offender registers"
Insert: "verify the offender's registration status"

3. Page 3, line 8 through line 9.
Strike: "or given" on line 8 through "designation" on line 9

4. Page 3, line 11 through line 12.
Strike: "or given" on line 11 through "designation" on line 12

5. Page 5, line 15 through page 6, line 21.
Strike: section 5 in its entirety
Renumber: subsequent section

6. Page 7, line 20 through line 21.
Strike: "or, if" on line 20 through "state" on line 21

7. Page 7, line 24.

Committee Vote:
Yes 18, No 0.

141328SC.hkh
1/19/05

Following: "department"
Insert: "of justice"

- END -

HOUSE STANDING COMMITTEE REPORT

Mr. Speaker:

We, your committee on **Judiciary** recommend that **House Bill 66** (first reading copy -- white) **do pass as amended**.

Signed: Diane Rice
Representative Diane Rice, Chair

And, that such amendments read:

1. Page 1, line 14.
Strike: ", whether or not a fine is also levied,"

2. Page 1, line 15.
Strike: "against the term of imprisonment"

3. Page 1, line 17.
Following: "~~bail and~~"
Insert: "who does not supply bail and"

4. Page 1, line 18.
Strike: "in addition to a term of imprisonment"

5. Page 1, line 18 through line 19.
Strike: "also, in" on line 18 through "imprisonment," on line 19
Strike: "against the amount of the fine" on line 19

6. Page 1, line 20 through line 22.
Strike: ". A person" on line 20 through ". The" on line 22
Insert: ", except that the"

Committee Vote:
Yes 18, No 0.

141401SC.hkh
1/19/05

- END -

141401SC.hkh
1/19/05

HOUSE STANDING COMMITTEE REPORT

January 19, 2005

Mr. Speaker:

We, your committee on **Judiciary** recommend that **House Bill 110** (first reading copy -- white) **do pass as amended.**

Signed: Diane Rice
Representative Diane Rice, Chair

And, that such amendments read:

1. Page 2, line 3.
Insert: "(4) The attorney general shall adopt rules to implement this section. The rules must include a procedure by which the attorney general is assured that an identity theft passport applicant has an identity theft claim that is legitimate and adequately substantiated."

- END -

Committee Vote:
Yes 18, No 0.

141402SC.hkh
1/19/05

HOUSE STANDING COMMITTEE REPORT

Mr. Speaker:

We, your committee on **Judiciary** recommend that **House Bill 113** (first reading copy -- white) **do pass as amended.**

Signed: Diane Rice
Representative Diane Rice, Chair

And, that such amendments read:

1. Page 1, line 25.
Strike: "Title 45"
Following: "~~9,~~"
Insert: "the Montana Code Annotated"

- END -

Committee Vote:
Yes 12, No 6.

141403SC.hkh
1/19/05

HOUSE STANDING COMMITTEE REPORT

Mr. Speaker:

We, your committee on **Judiciary** recommend that **House Bill 169** (first reading copy -- white) **do pass as amended**.

Signed: Diane Rice
Representative Diane Rice, Chair

And, that such amendments read:

1. Page 7, line 23.
Following: "affixed"
Insert: ","

2. Page 7, line 24.
Strike: "and"
Following: "cigarettes"
Insert: ", and each pack sold, offered for sale, or possessed for sale"

3. Page 8, line 18 through line 23.
Strike: subsection (c) in its entirety

4. Page 8, line 27.
Strike: "recovered under part 4 of this chapter and subsection (1) and"
Insert: ","

5. Page 8, line 28.
Strike: "subsection (4)"
Insert: "parts 4 and 5 of this chapter"
Following: "department"
Insert: "of justice"

Committee Vote:
Yes 16, No 2.

141406SC.hkh
1/19/05

6. Page 8, line 30.
Following: "department"
Insert: "of justice"

- END -

HOUSE STANDING COMMITTEE REPORT

Mr. Speaker:

We, your committee on **Judiciary** recommend that **House Bill 191** (first reading copy -- white) **do pass as amended**.

Signed: Diane Rice
Representative Diane Rice, Chair

And, that such amendments read:

1. Page 1, line 15.
Following: "testify"
Insert: "during or after the marriage"

2. Page 1, line 18 through line 19.
Strike: ", except" on line 18 through "marriage" on line 19

- END -

Committee Vote:
Yes 17, No 1.

141404SC.hkh
1/19/05

HOUSE OF REPRESENTATIVES
Roll Call Vote
JUDICIARY COMMITTEE

DATE 1/19/05 BILL NO HB49 MOTION NO. 1
MOTION: Do Pass Amendment 49-02

NAME	AYE	NO	If Proxy Vote, check here and include signed Proxy Form with minutes.
REP. RON STOKER, VICE CHAIR	X		
REP. ARLENE BECKER	X		
REP. PAUL CLARK, VICE CHAIR	X		
REP. ROBYN DRISCOLL	X		
REP. GEORGE EVERETT	X		
REP. GAIL GUTSCHE	X		
REP. CHRISTOPHER HARRIS	X		
REP. ROGER KOOPMAN	X		
REP. MIKE LANGE	X		
REP. TOM McGILLVRAY	X		
REP. MARK NOENNIG	X		
REP. ART NOONAN	X		
REP. JOHN PARKER	X		
REP. JON SONJU	X		
REP. JOHN WARD	X		
REP. BILL WILSON	X		
REP. JEANNE WINDHAM	X		
REP. DIANE RICE, CHAIR	X		

HOUSE OF REPRESENTATIVES
Roll Call Vote
JUDICIARY COMMITTEE

DATE 1/19/05 BILL NO HB 49 MOTION NO. 2
MOTION: Move Amendment 49-01 (Koopman)

NAME	AYE	NO	If Proxy Vote, check here and include signed Proxy Form with minutes.
REP. RON STOKER, VICE CHAIR		X	
REP. ARLENE BECKER		X	
REP. PAUL CLARK, VICE CHAIR		X	
REP. ROBYN DRISCOLL	X	X	
REP. GEORGE EVERETT		X	
REP. GAIL GUTSCHE		X	
REP. CHRISTOPHER HARRIS		X	
REP. ROGER KOOPMAN	X		
REP. MIKE LANGE		X	
REP. TOM McGILLVRAY		X	
REP. MARK NOENNIG		X	
REP. ART NOONAN		X	
REP. JOHN PARKER		X	
REP. JON SONJU		X	
REP. JOHN WARD	X	X	
REP. BILL WILSON		X	
REP. JEANNE WINDHAM		X	
REP. DIANE RICE, CHAIR		X	

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2/16

HOUSE OF REPRESENTATIVES
Roll Call Vote
JUDICIARY COMMITTEE

DATE 1/19/05 BILL NO HB 9 MOTION NO. 3
MOTION: DO PASS AS AMENDED

NAME	AYE	NO	If Proxy Vote, check here and include signed Proxy Form with minutes.
REP. RON STOKER, VICE CHAIR	X		
REP. ARLENE BECKER	X		
REP. PAUL CLARK, VICE CHAIR	X		
REP. ROBYN DRISCOLL	X		
REP. GEORGE EVERETT	X		
REP. GAIL GUTSCHE	X		
REP. CHRISTOPHER HARRIS	X		
REP. ROGER KOOPMAN	X		
REP. MIKE LANGE	X		
REP. TOM McGILLVRAY	X		
REP. MARK NOENNIG	X		
REP. ART NOONAN	X		
REP. JOHN PARKER	X		
REP. JON SONJU	X		
REP. JOHN WARD	X		
REP. BILL WILSON	X		
REP. JEANNE WINDHAM	X		
REP. DIANE RICE, CHAIR	X		

HOUSE OF REPRESENTATIVES
Roll Call Vote
JUDICIARY COMMITTEE

DATE 1/19/05 BILL NO HB66 MOTION ~~NO.~~ 1
MOTION: DO PASS AS AMENDED

NAME	AYE	NO	If Proxy Vote, check here and include signed Proxy Form with minutes.
REP. RON STOKER, VICE CHAIR	X		
REP. ARLENE BECKER	X		
REP. PAUL CLARK, VICE CHAIR	X		
REP. ROBYN DRISCOLL	X		
REP. GEORGE EVERETT	X		
REP. GAIL GUTSCHE	X		
REP. CHRISTOPHER HARRIS	X		
REP. ROGER KOOPMAN	X		
REP. MIKE LANGE	X		
REP. TOM McGILLVRAY	X		
REP. MARK NOENNIG	X		
REP. ART NOONAN	X		
REP. JOHN PARKER	X		
REP. JON SONJU	X		
REP. JOHN WARD	X		
REP. BILL WILSON	X		
REP. JEANNE WINDHAM	X		
REP. DIANE RICE, CHAIR	X		

HOUSE OF REPRESENTATIVES
Roll Call Vote
JUDICIARY COMMITTEE

DATE 1/19/05 BILL NO HB 110 MOTION NO. 1
MOTION: Do Pass As Amended

NAME	AYE	NO	If Proxy Vote, check here and include signed Proxy Form with minutes.
REP. RON STOKER, VICE CHAIR	X		
REP. ARLENE BECKER	X		
REP. PAUL CLARK, VICE CHAIR	X		
REP. ROBYN DRISCOLL	X		
REP. GEORGE EVERETT	X		
REP. GAIL GUTSCHE	X		
REP. CHRISTOPHER HARRIS	X		
REP. ROGER KOOPMAN	X		
REP. MIKE LANGE	X		
REP. TOM McGILLVRAY	X		
REP. MARK NOENNIG	X		
REP. ART NOONAN	X		
REP. JOHN PARKER	X		
REP. JON SONJU	X		
REP. JOHN WARD	X		
REP. BILL WILSON	X		
REP. JEANNE WINDHAM	X		
REP. DIANE RICE, CHAIR	X		

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18/0

HOUSE OF REPRESENTATIVES
Roll Call Vote
JUDICIARY COMMITTEE

DATE 1/19/05 BILL NO HB113 MOTION ~~NO~~ 1
MOTION: Do Pass As Amended

NAME	AYE	NO	If Proxy Vote, check here and include signed Proxy Form with minutes.
REP. RON STOKER, VICE CHAIR	X		
REP. ARLENE BECKER	X		
REP. PAUL CLARK, VICE CHAIR		X	
REP. ROBYN DRISCOLL	X		
REP. GEORGE EVERETT		X	
REP. GAIL GUTSCHE	X		
REP. CHRISTOPHER HARRIS	X		
REP. ROGER KOOPMAN		X	
REP. MIKE LANGE	X		
REP. TOM McGILLVRAY	X		
REP. MARK NOENNIG	X		
REP. ART NOONAN	X		
REP. JOHN PARKER	X		
REP. JON SONJU		X	
REP. JOHN WARD		X	
REP. BILL WILSON	X		
REP. JEANNE WINDHAM	X		
REP. DIANE RICE, CHAIR		X	

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6

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Montana House of Representatives
Visitors Register

JUDICIARY COMMITTEE **Date** 1-19-05

Bill No. HB-197 **Sponsor(s)** Rep. J. Jayne

PLEASE PRINT **PLEASE PRINT** **PLEASE PRINT**

Name and Address	Representing	Support	Oppose	Inf.
Rick Bartos	DPHHS	X		
Leo Gallagher	Lewis & Clark Co HHS	X		
Lisa Swanson	DPHHS	X		
Tylynn Gordon	Aud. for's office	X		
Kaz Hughes	MT Health Care Assn	X		
Beth Brehmeyer	MT Advocacy Program	X		
Betty Beverly	MSCA	X		

Please leave prepared testimony with Secretary. Witness Statement forms are available if you care to submit written testimony.

/s/JudicVisitorReg.sample2003

Montana House of Representatives
Visitors Register

JUDICIARY COMMITTEE **Date** 1-19-05

Bill No. HB-245 **Sponsor(s)** Rep G. Maclaren

PLEASE PRINT **PLEASE PRINT** **PLEASE PRINT**

Name and Address	Representing	Support	Oppose	Inf.
GILDA C LANCY	MT EAGLE FORUM	✓		
Jacque Trude	self	✓		

Please leave prepared testimony with Secretary. Witness Statement forms are available if you care to submit written testimony.

/s/JudicVisitorReg.sample2003

Montana House of Representatives
Visitors Register

JUDICIARY COMMITTEE **Date** 1-19-05

Bill No. HB-40 **Sponsor(s)** Rep. C. Harris

PLEASE PRINT **PLEASE PRINT** **PLEASE PRINT**

Name and Address	Representing	Support	Oppose	Inf.
Ali Bovingdon	AG's Office / DOJ	X		

Please leave prepared testimony with Secretary. Witness Statement forms are available if you care to submit written testimony.

/s/JudicVisitorReg.sample2003

Montana House of Representatives
Visitors Register

JUDICIARY COMMITTEE **Date** 1-19-05

Bill No. HB-243 **Sponsor(s)** Rep. C. Lambert

PLEASE PRINT **PLEASE PRINT** **PLEASE PRINT**

Name and Address	Representing	Support	Oppose	Inf.
Leo Gallagher	Lewis & Clark Cty	✓		
HAROLD BLATTIE	MACo	✓		
LINDA STOLL	MISSOULA COUNTY	✓		
Jim Smith	MSPOA	✓		

Please leave prepared testimony with Secretary. Witness Statement forms are available if you care to submit written testimony.

/s/JudicVisitorReg.sample2003

HOUSE OF REPRESENTATIVES
Roll Call
JUDICIARY COMMITTEE

DATE 1/21/05

NAME	PRESENT	ABSENT	EXCUSED
REP. DIANE RICE, CHAIR	X		
REP. RON STOKER, VICE CHAIR	X		
REP. PAUL CLARK, VICE CHAIR	X		
REP. ARLENE BECKER	X		
REP. ROBYN DRISCOLL	X		
REP. GEORGE EVERETT	X		
REP. GAIL GUTSCHE	X		
REP. CHRISTOPHER HARRIS	X		
REP. ROGER KOOPMAN	X		
REP. MIKE LANGE	X		
REP. TOM McGILLVRAY	X		
REP. MARK NOENNIG	X		
REP. ART NOONAN	X		
REP. JOHN PARKER	X		
REP. JON SONJU	X		
REP. JOHN WARD	X		
REP. BILL WILSON	X		
REP. JEANNE WINDHAM	X		

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HOUSE STANDING COMMITTEE REPORT

January 21, 2005

Mr. Speaker:

We, your committee on **Judiciary** recommend that **House Bill 146** (first reading copy -- white)

do pass as amended.

Signed: Diane Rice
Representative Diane Rice, Chair

And, that such amendments read:

1. Title, page 1, line 5.
Strike: "REPEALING SECTION 17-8-231, MCA;"

2. Page 6, line 12 through line 13.
Strike: "and that" on line 12 through "purposes" on line 13

3. Page 7, line 3.
Strike: section 13 in its entirety
Renumber: subsequent section

- END -

Committee Vote:
Yes 18, No 0.

161255SC.hkh

1/21 9:40

HOUSE STANDING COMMITTEE REPORT

Mr. Speaker:

We, your committee on **Judiciary** recommend that **House Bill 40** (first reading copy -- white) **do pass**.

Signed: Diane Rice
Representative Diane Rice, Chair

- END -

Committee Vote:
Yes 18, No 0.

161258SC.hkh

1/21 mp

HOUSE STANDING COMMITTEE REPORT

Mr. Speaker:

We, your committee on **Judiciary** recommend that **House Bill 257** (first reading copy -- white) **do pass**.

Signed: Diane Rice
Representative Diane Rice, Chair

- END -

Committee Vote:
Yes 18, No 0.

161256SC.hkh

1/21 mp

HOUSE STANDING COMMITTEE REPORT

January 21, 2005

Mr. Speaker:

We, your committee on **Judiciary** recommend that **House Bill 264** (first reading copy -- white) **do pass**.

Signed: Diane Rice
Representative Diane Rice, Chair

- END -

Committee Vote:
Yes 16, No 2.

161257SC.hkh

1/21 9AM

HOUSE OF REPRESENTATIVES
Roll Call Vote
JUDICIARY COMMITTEE

DATE 1/21/05 BILL NO HB 1476 MOTION NO. 6
MOTION: Do Pass As Amended

NAME	AYE	NO	If Proxy Vote, check here and include signed Proxy Form with minutes.
REP. RON STOKER, VICE CHAIR	X		
REP. ARLENE BECKER	X		
REP. PAUL CLARK, VICE CHAIR	X		
REP. ROBYN DRISCOLL	X		
REP. GEORGE EVERETT	X		
REP. GAIL GUTSCHE	X		
REP. CHRISTOPHER HARRIS	X		
REP. ROGER KOOPMAN	X		
REP. MIKE LANGE	X		
REP. TOM McGILLVRAY	X		
REP. MARK NOENNIG	X		
REP. ART NOONAN	X		
REP. JOHN PARKER	X		
REP. JON SONJU	X		
REP. JOHN WARD	X		
REP. BILL WILSON	X		
REP. JEANNE WINDHAM	X		
REP. DIANE RICE, CHAIR	Y		

s:/JudicRollCallVote2005

18/0

Montana House of Representatives
Visitors Register

JUDICIARY COMMITTEE **Date** 1-21-05

Bill No. HB-257 **Sponsor(s)** Rep. G. Branae

PLEASE PRINT **PLEASE PRINT** **PLEASE PRINT**

Name and Address	Representing	Support	Oppose	Inf.
Kathy Kenyon PO 37000 Billings	Deaconess Billings Clinic	Y		
Jami McCall	DBC	X		
Tom Ebzery	SV Healthcare	X		

Please leave prepared testimony with Secretary. Witness Statement forms are available if you care to submit written testimony.

/s/JudicVisitorReg.sample2003

Montana House of Representatives
Visitors Register

JUDICIARY COMMITTEE **Date** 1-21-05

Bill No HB-267 **Sponsor(s)** Rep. R. Stoker

PLEASE PRINT **PLEASE PRINT** **PLEASE PRINT**

Name and Address	Representing	Support	Oppose	Inf.
HAROLD BLATTIE	MAG	✓		
Rodney Hendrick	Rep.	✓		✓
Pam Buen	DOT			✓

Please leave prepared testimony with Secretary. Witness Statement forms are available if you care to submit written testimony.

/s/JudicVisitorReg.sample2003

Montana House of Representatives
Visitors Register

JUDICIARY COMMITTEE **Date** 1-21-05

Bill No. HB-285 **Sponsor(s)** Rep. J. Taylor

PLEASE PRINT **PLEASE PRINT** **PLEASE PRINT**

Name and Address	Representing	Support	Oppose	Inf.
Kelsen Young PO Box 633 Helena, 59624	MCADSV	X		
Dawn Haydon PO Box 633 Helena	self MCADSV	X		
MATTHEW DALE	ATTNY GEN OFF	X		
Kati Chalena	MCADSV	X		

Please leave prepared testimony with Secretary. Witness Statement forms are available if you care to submit written testimony.

/s/JudicVisitorReg.sample2003

Montana House of Representatives
Visitors Register

JUDICIARY COMMITTEE **Date** 1-21-05

Bill No. HB-264 **Sponsor(s)** Rep. J. Windham

PLEASE PRINT **PLEASE PRINT** **PLEASE PRINT**

Name and Address	Representing	Support	Oppose	Inf.
Cindy Paradis 1712 9th Ave Helena, MT	Crime Victim Comp Restitution	X		
Dawn Hayden	self	X		
MATTHEW KALE	ATTY GEN OFF	X		
Kate Cholewa	MCADSV	X		
Tom Burey	DOJ	X		

Please leave prepared testimony with Secretary. Witness Statement forms are available if you care to submit written testimony.

/s/JudicVisitorReg.sample2003

Montana House of Representatives
Visitors Register

JUDICIARY COMMITTEE **Date** 1-21-05

Bill No. HB-280 **Sponsor(s)** Rep. P. Wagman

PLEASE PRINT **PLEASE PRINT** **PLEASE PRINT**

Name and Address	Representing	Support	Oppose	Inf.
Mary "Marty" Phippen	MT. Assn. Clerks of District Court	X		
Wayne Phillips Plzw, Mont	Mont. Judges Assoc	X		
David Martin	MWA & Lee Enterprises	X		
ANITA ROESSMANN	MAP		X	

Please leave prepared testimony with Secretary. Witness Statement forms are available if you care to submit written testimony.

/s/JudicVisitorReg.sample2003

5
3-2-05
HB 40

DEPARTMENT OF JUSTICE
HB 40: Including Reverse False Claims (Underpayment) in Montana's False Claims Statute

Reverse False Claims
Rather than a claim based on an entity overcharging a state agency, a reverse false claim involves fraud that leads to an entity paying the state ***less*** than it should.

Montana's Drug Pricing Lawsuit
In 2002, the State of Montana sued a number of pharmaceutical manufacturers, charging that the companies' drug pricing practices defrauded the state, consumers and others of millions of dollars. In *State of Montana v. Abbott Labs, Inc., et al*, the state alleged that the named drug companies engaged in fraud by:

- ***overstating the Average Wholesale Price (AWP)*** of many of their prescription drugs, gouging consumers, taxpayers and the Medicare and Medicaid programs. The federal Medicare program, the state Medicaid program, and certain patients reimburse physicians and pharmacies for hundreds of prescription drugs based on the average wholesale price.
- ***reporting false "Best Prices" used to calculate rebates*** owed to the states, including Montana. Drug companies artificially inflated the "Best Price" of certain drugs by reporting higher prices and excluding discounts and other inducements. As a result, they paid lower rebates to the state, violating the federal Medicaid Rebate Statute and Agreement.

Problems with Montana's False Claims Act
Montana filed suit for both the Best Prices and AWP fraud, partially based on its False Claims Act, MCA §17-8-231. However, federal District Court Judge Saris dismissed the counts. The Court held that the language of Montana's False Claims Act only accounted for claims made for payment to a state agency and did not cover claims that lead to an underpayment (a reverse false claim) to the state.

Proposed Changes
The federal False Claims Act was amended in 1986 to provide for reverse false claims. The language in HB 40 is modeled on that federal legislation. The proposed language will clearly allow:

- civil and criminal prosecution of reverse false claims in Montana
- the state to establish liability when claims are made that lead to a financial underpayment to a state agency

Summary
Whether a person or business makes a false claim or a reverse false claim, it is the citizens of Montana who end up paying. False claims and reverse false claims have the same result – Montana is cheated of financial resources. This bill would clarify that both forms of fraud are punishable under our state law.

2005 Legislature
March 2, 2005

MONTANA SENATE
2005 LEGISLATURE

ROLL CALL

JUDICIARY

DATE 3-2-05

NAMES	PRESENT	ABSENT	EXCUSED
SEN. MICHAEL WHEAT, CHAIRMAN	X		
SEN. BRENT CROMLEY		X	
SEN. AUBYN CURTISS	X		
SEN. JON ELLINGSON	X		
SEN. JESSE LASLOVICH	X		
SEN. JEFF MANGAN	X		
SEN. DAN McGEE	X		
SEN. LYNDA MOSS	X		
SEN. JERRY O'NEIL	X		
SEN. GERALD PEASE	X		
SEN. GARY PERRY	X		
SEN. JIM SHOCKLEY	X		
VALENCIA LANE, LSD			
MARI PREWETT, COMMITTEE SECRETARY			

SENATE STANDING COMMITTEE REPORT

March 2, 2005

Mr. President:

We, your committee on **Judiciary** recommend that **House Bill 66** (third reading copy -- blue) **be concurred in**.

Signed: _____
Senator Mike Wheat, Chair

To be carried by Senator Jeff Mangan

- END -

Committee Vote:
Yes 11, No 0.

461329SC.ssc

SENATE STANDING COMMITTEE REPORT

March 2, 2005

Mr. President:

We, your committee on **Judiciary** recommend that **House Bill 128** (third reading copy -- blue) **be concurred in.**

Signed: _____
Senator Mike Wheat, Chair

To be carried by Senator Mike Wheat

- END -

Committee Vote:
Yes 11, No 0.

461330SC.ssc

PROXY VOTE

I, the undersigned, hereby authorize Senator MAHAN to vote my proxy on any issue before the Senate Judiciary Committee held on 3.2.05, 2005.

HB 66 Y
HB 128 Y

SENATOR
STATE OF MONTANA

PROXY VOTE

I, the undersigned, hereby authorize Senator MANGAN to vote my proxy on any issue before the Senate Judiciary Committee held on 3/2/05, 2005.

HB66 Y
HB128 Y

SENATOR
STATE OF MONTANA

DATE 3-2-05

SENATE COMMITTEE ON Judiciary

BILLS BEING HEARD TODAY: HB 40, HB 46, HB 66, HB 128

HB 205 & HB 307

PLEASE PRINT

NAME	PHONE	REPRESENTING	BILL #	SUPPORT	OPPOSE
STAN R. PUTNAM	324-3010	DEPT of M.I AFF MT NATIONAL GUARD	128	X	
Jim Kembel	439-6791	MACOP MPPA	307	X	
PAT BRINKMAN	771-1464	GREAT FALLS PD	307	X	
Bill Muhs	587-3672	MADD	46	X	
Kris Munard	443-8716		46	X	
Mike Batista	2967	DOJ	307		
Beth McLaughlin	841-2966	Supreme Court	205	X	
Ali Bovingdon	444-2026	Atty Gen'l's office	66	X	
" "	" "	" "	40	X	
" "	" "	" "	46	X	
HAROLD BLATTIE	4-4360	MACO	66	X	
Jim Smith	3-1570	Sheriffs & County Attys	46 307 66	✓	
BRIAN FULFORD	758-7793	KALISPELL POLICE DEPT	307	✓	
Karen Powell	444-5222	SAO	307	✓	

VISITOR REGISTER

PLEASE LEAVE PREPARED STATEMENT WITH COMMITTEE SECRETARY

Exhibit 1
Date 3-24-05
Bill No. HB 40

Amendments to House Bill No. 40
3rd Reading Copy

For the Senate Judiciary Committee

Prepared by Valencia Lane
(Requested by the Department of Justice)
March 23, 2005 (4:44pm)

1. Page 1, line 21.
Following: line 20
Insert: "(2) This section does not apply to claims, records, or statements made in relation to claims filed with the state compensation insurance fund under Title 39, chapter 71 or 72, or to claims, records, payments, or statements made under the tax laws contained in Title 15 or 16 or made to the department of natural resources and conservation under Title 77. "
Renumber: subsequent subsection

- END -

MONTANA SENATE
2005 LEGISLATURE

ROLL CALL

JUDICIARY

DATE 3-24-05

NAMES	PRESENT	ABSENT	EXCUSED
SEN. MICHAEL WHEAT, CHAIRMAN	X		
SEN. BRENT CROMLEY	X		
SEN. AUBYN CURTISS	X		
SEN. JON ELLINGSON	X		
SEN. JESSE LASLOVICH	X		
SEN. JEFF MANGAN	X		
SEN. DAN McGEE	X		
SEN. LYNDA MOSS	X		
SEN. JERRY O'NEIL	X		
SEN. GERALD PEASE	X		
SEN. GARY PERRY	X		
SEN. JIM SHOCKLEY	X		
VALENCIA LANE, LSD	X		
MARI PREWETT, COMMITTEE SECRETARY	X		

SENATE STANDING COMMITTEE REPORT

Mr. President:

We, your committee on **Judiciary** recommend that **House Bill 40** (third reading copy -- blue) **be concurred in as amended.**

Signed: _____
Senator Mike Wheat, Chair

To be carried by Senator Brent Cromley

And, that such amendments read:

1. Page 1, line 16.
Following: "claim"
Strike: ", including all legal costs"
Following: "."
Insert: "The court shall also award expenses, costs, and attorney fees."

2. Page 1, line 20.
Following: "statement"
Strike: ", including all legal costs"
Following: "."
Insert: "The court shall also award expenses, costs, and attorney fees."

3. Page 1, line 21.
Following: line 20
Insert: "(2) This section does not apply to claims, records, or statements made in relation to claims filed with the state compensation insurance fund under Title 39, chapter 71 or 72, or to claims, records, payments, or statements made under the tax laws contained in Title 15 or 16 or made to the department of natural resources and conservation under Title 77."
Renumber: subsequent subsection

- END -

Committee Vote:
Yes 12, No 0.

651334SC.ssc

SENATE STANDING COMMITTEE REPORT

Mr. President:

We, your committee on **Judiciary** recommend that **House Bill 280** (third reading copy -- blue) **be concurred in**.

Signed: _____
Senator Mike Wheat, Chair

To be carried by Senator Jeff Mangan

- END -

Committee Vote:
Yes 7, No 5.

651222SC.ssc

SENATE STANDING COMMITTEE REPORT

Mr. President:

We, your committee on **Judiciary** recommend that **House Joint Resolution 15** (third reading copy -- blue) **be concurred in as amended**.

Signed: _____
Senator Mike Wheat, Chair

To be carried by Senator Gerald Pease

And, that such amendments read:

1. Page 2, line 5.
Following: "~~Montana~~"
Strike: "DETERMINE"
Insert: "study"
Following: "REASONS"
Insert: ", including quality of counsel, arrest rates, detention in jail versus release on bail, the various uses of plea agreements and trials, rates of conviction, sentencing patterns, opportunities for effective treatment, rates of incarceration, rates in receiving deferred or suspended sentences and in granting of parole, and differences in probation and parole revocations,"

2. Page 2, line 6.
Following: "SYSTEM"
Insert: "in Montana"

3. Page 2, line 14.
Following: "Legislature"
Insert: ", each tribal government located on the seven Montana reservations and to the Little Shell band of Chippewa, the Governor, the Montana Congressional Delegation, and the Bureau of Indian Affairs of the United States Department of the Interior"

- END -

Committee Vote:
Yes 11, No 1.

651333SC.ssc

COMMITTEE FILE COPY

TABLED BILL

The **SENATE JUDICIARY COMMITTEE** TABLED **HB 91, HB 222**, by motion, on **Thursday, March 24, 2005**.

(For the Committee)

(Secretary of Senate)

10:00, 3-24
(Time) (Date)

March 24, 2005 Mari Prewett, Secretary Phone: 4697

MONTANA STATE SENATE
2005 LEGISLATURE

ROLL CALL VOTE

JUDICIARY COMMITTEE

DATE 3/25/04 BILL NO. HB 280 NUMBER 1

MOTION: Amendment ~~of~~ HB028001.avl

NAME	AYE	NO
SEN. JERRY O'NEIL (R)		X
SEN. LYNDA MOSS (D)	X	
SEN. JIM SHOCKLEY (R)	X	
SEN. JON ELLINGSON (D)	X	
SEN. GERALD PEASE (D)	X	
SEN. JEFF MANGAN (D)		X
SEN. DAN MC GEE (R)		X
SEN. MICHAEL WHEAT (D), CHAIRMAN	X	
SEN. BRENT CROMLEY (D), VICE CHAIRMAN		X
SEN. GARY PERRY (R)		X
SEN. JESSE LASLOVICH (D)		X
SEN. AUBYN CURTISS (R)		X

5 7

MONTANA STATE SENATE
2005 LEGISLATURE

ROLL CALL VOTE

JUDICIARY COMMITTEE

DATE 3/24/05 BILL NO. HB 91 NUMBER 1

MOTION: Table

NAME	AYE	NO
SEN. JERRY O'NEIL (R)	X	
SEN. LYNDA MOSS (D)		X
SEN. JIM SHOCKLEY (R)	X	
SEN. JON ELLINGSON (D)		X
SEN. GERALD PEASE (D)	X	
SEN. JEFF MANGAN (D)	X	
SEN. DAN MC GEE (R)	X	
SEN. MICHAEL WHEAT (D), CHAIRMAN		X
SEN. BRENT CROMLEY (D), VICE CHAIRMAN		X
SEN. GARY PERRY (R)	X	
SEN. JESSE LASLOVICH (D)	X	
SEN. AUBYN CURTISS (R)	X	

8 4

MONTANA STATE SENATE
2005 LEGISLATURE

ROLL CALL VOTE

JUDICIARY COMMITTEE

DATE 3/24/ BILL NO. HB 99 NUMBER 1

MOTION: remove from Table

NAME	AYE	NO
SEN. JERRY O'NEIL (R)		X
SEN. LYNDA MOSS (D)	X	
SEN. JIM SHOCKLEY (R)		X
SEN. JON ELLINGSON (D)	X	
SEN. GERALD PEASE (D)	X	
SEN. JEFF MANGAN (D)	X	
SEN. DAN MC GEE (R)		X
SEN. MICHAEL WHEAT (D), CHAIRMAN	X	
SEN. BRENT CROMLEY (D), VICE CHAIRMAN	X	
SEN. GARY PERRY (R)		X
SEN. JESSE LASLOVICH (D)		X
SEN. AUBYN CURTISS (R)		X

6 6

MONTANA STATE SENATE
2005 LEGISLATURE

ROLL CALL VOTE

JUDICIARY COMMITTEE

DATE 3/24/05 BILL NO. HB 222 NUMBER 1

MOTION: Amend. #1 of Amend HB022201.avl.

NAME	AYE	NO
SEN. JERRY O'NEIL (R)	X	
SEN. LYNDA MOSS (D)		X
SEN. JIM SHOCKLEY (R)		X
SEN. JON ELLINGSON (D)		X
SEN. GERALD PEASE (D)		X
SEN. JEFF MANGAN (D)		X
SEN. DAN MC GEE (R)	X	
SEN. MICHAEL WHEAT (D), CHAIRMAN		X
SEN. BRENT CROMLEY (D), VICE CHAIRMAN		X
SEN. GARY PERRY (R)	X	
SEN. JESSE LASLOVICH (D)	X	
SEN. AUBYN CURTISS (R)	X	

5 7

MONTANA STATE SENATE
2005 LEGISLATURE

ROLL CALL VOTE

JUDICIARY COMMITTEE

DATE 3/24/05 BILL NO. HB 222 NUMBER _____

MOTION: do concur as amended

NAME	AYE	NO
SEN. JERRY O'NEIL (R)		X
SEN. LYNDA MOSS (D)		X
SEN. JIM SHOCKLEY (R)		X
SEN. JON ELLINGSON (D)		X
SEN. GERALD PEASE (D)		X
SEN. JEFF MANGAN (D)	X	
SEN. DAN MC GEE (R)	X	
SEN. MICHAEL WHEAT (D), CHAIRMAN		X
SEN. BRENT CROMLEY (D), VICE CHAIRMAN		X
SEN. GARY PERRY (R)	X	
SEN. JESSE LASLOVICH (D)	X	X
SEN. AUBYN CURTISS (R)		

4 8

PROXY VOTE

I, the undersigned, hereby authorize Senator McGee to vote my proxy on any issue before the Senate Judiciary Committee held on 3/24/05, 2005.

HB40: Amd (4) DC/A y = all

SENATOR Smoczyk
STATE OF MONTANA